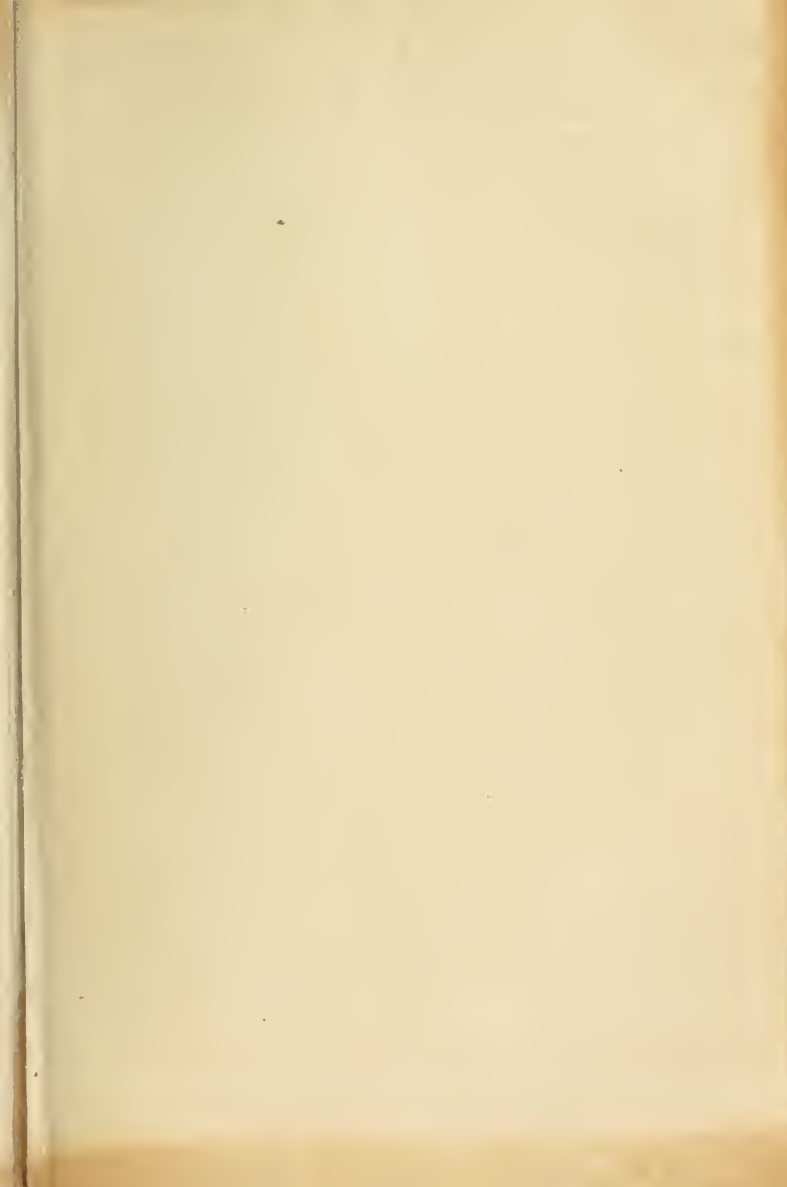




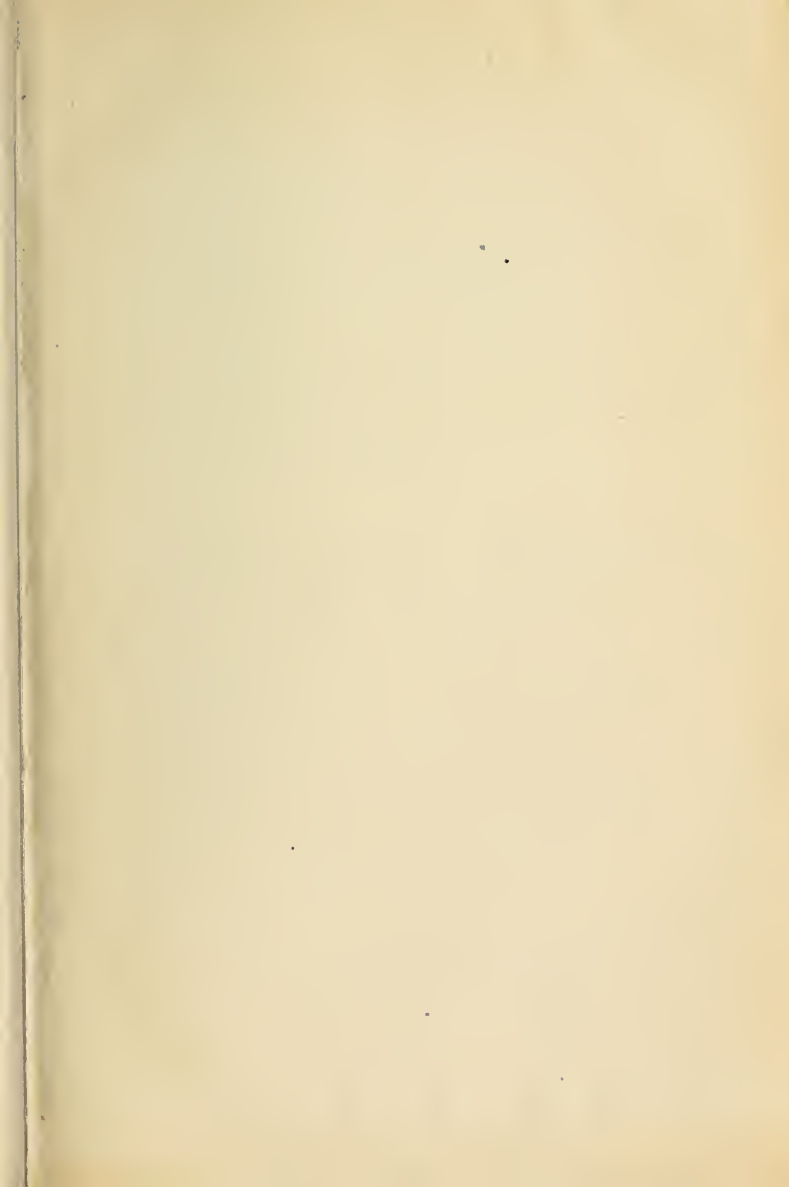


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A
MANUAL OF PRACTICE

IN THE COURTS OF THE

UNITED STATES.

Embracing the Provisions of the Constitution, the Revised
Statutes and Amendments thereto relating to Federal
Courts, together with the Rules promulgated by
the Supreme Court of the United States.

WITH NOTES OF DECISIONS.

BY

ROBERT DESTY,

ATTORNEY AT LAW.

NINTH EDITION.

Revised and brought to date, with the addition of the Rules of
the Circuit Courts of Appeals, the Bankruptcy Act,
and General Orders in Bankruptcy.

BY

M. A. FOLSOM,

ATTORNEY AT LAW.

TOGETHER WITH A VOLUME OF FORMS,

Adapted and Referring to this Manual.

BY

C. H. TEBBS.

Attorney at Law, and Solicitor of the Supreme Court
of Judicature, England.

THE WHOLE IN FOUR VOLUMES.

VOL. I.

SAN FRANCISCO:

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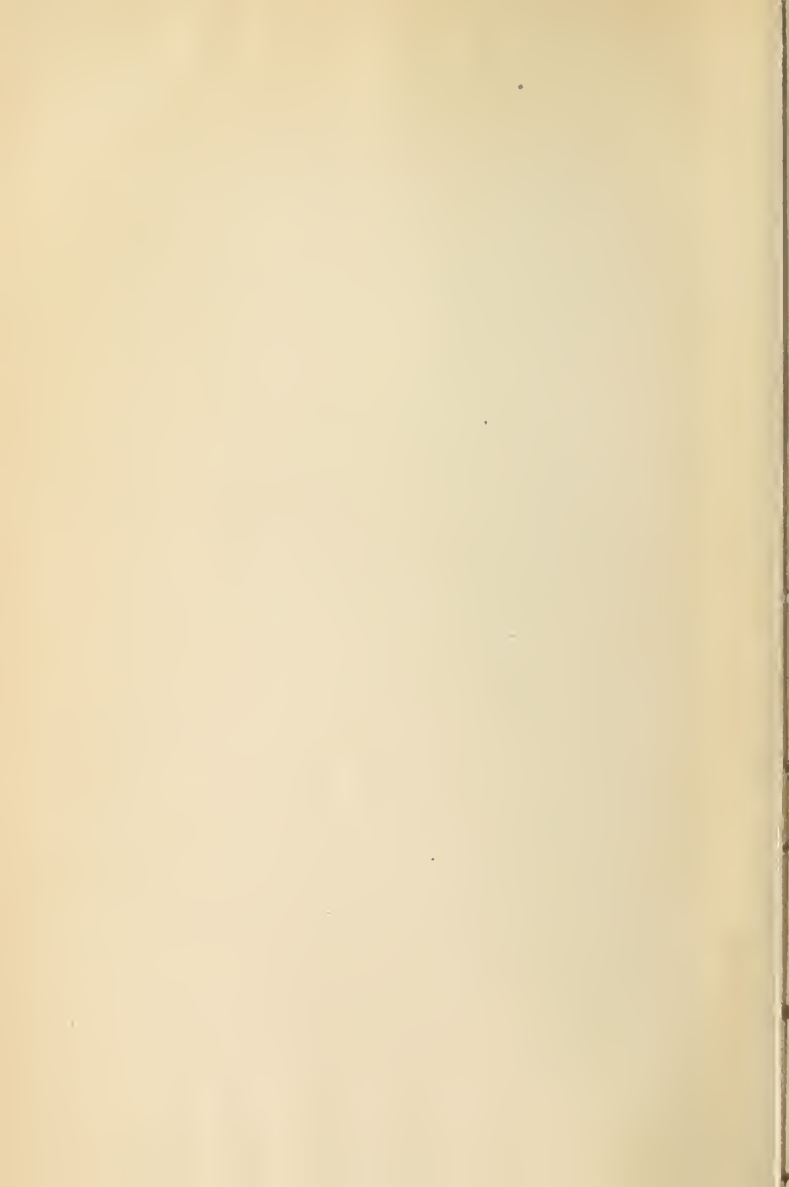
PREFACE TO NINTH EDITION.

The fact that over three thousand cases, involving questions of procedure in the Federal Courts, have been decided since the publication of the eighth edition of Desty's Federal Procedure will serve to indicate the necessity for a new edition. The various statutes on the subject have been amended, and new statutes added. Many of the rules promulgated by the Supreme Court have been amended, and the rules of the several Circuit Courts of Appeals have been changed. The bankruptcy Act of 1898 contains so much matter relating to procedure that it has seemed best to insert the act in full, together with the General Orders in Bankruptcy promulgated by the Supreme Court. The matter contained in Desty's Removal of Causes which is still of value has been incorporated in the chapter of this work relating to that subject. In the earlier editions many citations were made to cases in reports and other publications now inaccessible to a large number of attorneys. Most of these cases are to be found in the series known as Federal Cases, and citations to that series have been inserted in this edition.

M. A. F.

SAN FRANCISCO,
April, 1899.

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PREFACE TO EIGHTH EDITION.

This, the eighth edition, is wholly revised and is now substantially a new work, embodying in a much enlarged form all that is still applicable in former editions, together with the additional matter gleaned from later adjudications of the courts and all the statutory enactments now in force, including those of the first session of the Fifty-second Congress. For the insertion of the latest cases while the work was passing through the press, the proof-reading and index to this edition, acknowledgment is hereby made of the valuable services of MR. CHAS. T. BOONE.

FEBRUARY, 1893.



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§ 1. Supreme and inferior courts.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. (U. S. Const. art. 3.)

Power of Congress.—Congress cannot confer any part of the judicial power upon an executive officer. (Beatty v. U. S., 1 Dev. 231.) Congress cannot give jurisdiction or require services of any officer of a

State government. (Ex parte Pool, 2 Va. Cas. 276; Prigg v. Pennsylvania, 16 Peters, 539.) Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself (U. S. v. Ames, 1 Wood. & M. 76; Fed. Cas. No. 14441; The British Prisoners, 1 Wood. & M. 66; Fed. Cas. No. 12734; Martin v. Hunter, 1 Wheat. 304; Houston v. Moore, 5 Wheat. 1, 3 Serg. & R. 169; Ex parte Knowles, 5 Cal. 300; Davison v. Champlin, 7 Conn. 244; Ely v. Peck, 7 Conn. 239; U. S. v. Lathrop, 17 Johns. 4; State v. McBride, Rice, 400; Jackson v. Rose, 2 Va. Cas. 34), nor vest any portion of the jurisdiction of the United States in State courts. (Martin v. Hunter, 1 Wheat. 304; Houston v. Moore, 5 Wheat. 1; Stearns v. U. S., 2 Paine, 300; Fed. Cas. No. 13341; Ex parte Knowles, 5 Cal. 300; Ely v. Peck, 7 Conn. 239; Davison v. Champlin, 7 Conn. 244; U. S. v. Lathrop, 17 Johns. 4; State v. McBride, Rice, 400; Jackson v. Rose, 2 Va. Cas. 34.) A State court cannot exercise jurisdiction conferred upon it by Congress. (Ex parte Knowles, 5 Cal. 300.) Congress cannot enforce jurisdiction on a State court (Stearns v. U. S., 2 Paine, 300; Fed. Cas. No. 13341; Ex parte Stephens, 70 Mass. 559; The British Prisoners, 1 Wood. & M. 66; Fed. Cas. No. 12734), nor compel a State court to exert jurisdiction (Stearns v. U. S., 2 Paine, 300; Fed. Cas. No. 13341; Ex parte Stephens, 70 Mass. 559), nor can Congress give jurisdiction, or require service of any officer of a State government as such (Prigg v. Commonwealth, 16 Peters, 539; Ex parte Pool, 2 Va. Cas. 276), nor confer jurisdiction on a military commission. (Ex parte Milligan, 4 Wall. 121.) This clause does not apply to or prohibit the establishment of military courts in the insurrectionary States. (Territorial courts, see art. 4, sec. 3, subd. 2.) Congress may authorize any United States court to perform any act

which the constitution does not require to be performed in a different manner. (Ex parte Gist, 26 Ala. 156; Ex parte Pool, 2 Va. Cas. 276.) The judicial power of the United States is vested, by the constitution, in the courts of the United States. (Thomas v. Loney, 134 U. S. 372.) Whether Congress may confer on inferior courts jurisdiction of cases, whereof it gives the supreme court original jurisdiction, not decided. (Ames v. Kansas, 111 U. S. 449.) That it may confer original jurisdiction to subordinate courts over cases affecting consuls. (See Bors v. Preston, 111 U. S. 252; United States v. Ravara, 2 Dall. 297 [C. Ct.]; Fed. Cas. No. 16122; Davis v. Packard, 7 Peters. 276; see Ex parte Hitz, 111 U. S. 766.) An act which confers jurisdiction on the circuit courts to restrain combinations to obstruct interstate commerce is not void for want of power. (United States v. Elliott, 64 Fed. Rep. 27.) Congress may establish circuit and district courts in any State in the union, and may confer on them equitable jurisdiction in cases coming within the constitution (Livingston v. Story, 9 Peters, 632); and in all cases to which the judicial power extends it may rightfully vest exclusive jurisdiction. (The Moses Taylor v. Hammons, 4 Wall. 411.) Its power, however, affords no pretext for arrogating any established law of property, or for removing any obligation of the citizens of a State to submit to the rule of the local sovereign. (Suydam v. Williamson, 24 How. 427.)

Relation of Courts to Government.—The courts of the United States are in no sense agencies of the Federal Government, nor is the latter liable for their mistakes. (United States v. Dunnington, 146 U. S. 338.)

Judicial Power.—The constitution defines the limits of the judicial power, but Congress prescribes how

much of it is to be exercised by the federal courts. (Turner v. Bank of N. A., 4 Dall. 10; McIntyre v. Wood, 7 Cranch, 506; Kendall v. United States, 12 Peters, 616; Cary v. Curtis, 3 How. 245; Clark v. City of Janesville, 4 Am. Law Reg. 593; Fed. Cas. No. 2854.) Judicial power means that power with which courts are clothed for the purpose of the trial and determination of causes (United States v. Arredondo, 6 Peters, 691; Nashville C. & St. L. Ry. Co. v. Taylor, 86 Fed. Rep. 168), the power conferred to render a judgment or decree. (Rhode Island v. Massachusetts, 12 Peters, 657.) It is not sufficient to bring a matter under the judicial power that it involves the exercise of judgment upon law and facts. (United States v. Ferreira, 13 How. 40; Murray v. Hoboken etc. Co., 18 How. 272; Ex parte Gist, 26 Ala. 156.) The power to hear and pass upon the validity of a claim in an ex parte proceeding is not a judicial power. (United States v. Ferreira, 13 How. 40; United States v. Todd, 13 How. 52; Humphreys v. United States, 1 Dev. 204.) A provision requiring an assessor to impose a certain penalty if he shall find a return false does not confer judicial power (Doll v. Evans, 15 Int. Rev. Rec. 143; Fed. Cas. No. 3969); but administrative duties, the performance of which involves an inquiry into the existence of facts, and the application of them to the rules of law is, in an enlarged sense, a judicial act, as the adjustment of balances and auditing of accounts. (Murray v. Hoboken etc. Co., 18 How. 272.) Judicial power is never exercised for the purpose of giving effect to the will of the judge, but always of the will of the legislature, or of the law (Osborn v. Bank of United States, 9 Wheat. 818), and must regard the constitution as paramount. (Marbury v. Madison, 1 Cranch, 137; Cohens v. Virginia, 6 Wheat. 414.) The judiciary can only inquire whether the means devised by Congress, in the execution of a power, are for-

bidden by the constitution. (*Interstate Commerce Comm. v. Brimson*, 154 U. S. 447.) The powers not bestowed upon the federal courts by legislative provisions remain dormant until some law shall call them into action by designating the particular tribunal which shall be authorized to exercise them. (*Bank of United States v. Roberts*, 4 Conn. 323; *Fed. Cas. No. 934*; *Bank of United States v. Northumberland Bank*, 4 Conn. 333; *Fed. Cas. No. 931*. The distribution of powers is regulated and governed by the laws by which they are constituted. (*Smith v. Jackson*, 1 Paine, 453; *Fed. Cas. No. 13064*; *Moffatt v. Soley*, 2 Paine, 103; *Fed. Cas. No. 9688*; *Shute v. Davis*, *Peters*, C. C. 431; *Fed. Cas. No. 12828*.) The object of this provision was to establish a judiciary of the United States as a department of the government (*Chisholm v. Georgia*, 2 Dall. 419; *Osborne v. Bank of United States*, 9 Wheat, 818) which cannot interfere with the political department. (*Georgia v. Stanton*, 6 Wall. 50; *Loan Assn. v. Topeka*, 20 Wall. 669; *Lane v. Anderson*, 67 Fed. Rep. 563; *Enterprise Sav. Assn. v. Zumstein*, 37 U. S. App. 71; 67 Fed. Rep. 1000; *City of New Orleans v. Paine*, 147 U. S. 261; *Taylor v. Kercheval*, 82 Fed. Rep. 497.) Neither the executive nor the legislative department can be restricted by the judicial, though the acts of both, when performed, are, in proper cases, subject to its cognizance. (*Mississippi v. Johnson*, 4 Wall. 500, reviewing *Marbury v. Madison*, 1 Cranch, 137; *Kendall v. Stokes*, 12 Peters, 527.) The condition of peace or war, public or civil, must be determined by the political department, and not the judicial. (*United States v. Packages*, 11 Am. Law. Reg. 419.) Whether a foreign power has become an independent State is a question for the treaty-making power, and cannot be decided by the judiciary. (*Kennett v. Chambers*, 14 How. 38; *Gelston v. Hoyt*, 3 Wheat. 246; *Rose v.*

Himely, 4 Cranch, 241.) There is nothing in the constitution which prevents a ministerial officer, or person by law directed, to do an act necessary to bring the accused before the court possessing judicial power of determining his guilt or innocence. (Prigg v. Comm., 16 Peters, 539; Ableman v. Booth, 21 How. 506; Ex parte Martin, 2 Paine, 348; Fed. Cas. No. 9154; Ex parte Gist, 26 Ala. 156; Ex parte Pool, 2 Va. Cas. 276.) The general government has full authority to appoint and commission all courts, magistrates and officers to carry out its laws. (Ex parte Stephens, 70 Mass. 559.) As a general rule of law, a jurisdiction conferred upon a special tribunal does not oust that of the courts of general jurisdiction unless there be a plainly manifested intention of the legislature to that effect, to be derived from the words of the statute, or a necessary implication therefrom. (Fidelity Trust Co. v. Gill Car. Co., Cir. Ct. Ohio, 25 Fed. Rep. 737.)

Conferring Jurisdiction.—The jurisdiction of the supreme court is pointed out in the constitution. (Smith v. Jackson, 1 Paine, 453; Fed. Cas. No. 13064.) Its original jurisdiction exists only in cases of ambassadors, etc., and where a State is a party. (Martin v. Hunter, 1 Wheat. 304.) Its appellate power is to be defined by Congress. (Holmes v. Jennison, 14 Peters, 540; Decatur v. Paulding, 14 Peters, 612.) It has no power to review by *certiorari* proceedings of a military commission. (Ex parte Vallandigham, 1 Wall. 243.) The vesting of judicial power is imperative. (Martin v. Hunter, 1 Wheat. 328; Anderson v. Dunn, 6 Wheat. 214.) The power to establish courts and confer jurisdiction is unlimited. (Mayor v. Cooper, 6 Wall. 251.) Neither the legislative nor executive branches can assign any duties but such as are properly judicial, and to be performed in a judi-

cial manner. (Hayburn's Case, 2 Dall. 409; United States v. Ferreira, 13 How. 40; Doll v. Evans, 15 Int. Rev. Rec. 143; Fed. Cas. No. 3969.) Congress may say how much and what shall vest in one inferior court, and what in another. (United States v. New Bedford Bridge, 1 Wood. & M. 437; Fed. Cas. No. 15867.) Inferior courts are courts whose judgments can be reversed on appeal. (Nugent v. State, 18 Ala. 521.) Their jurisdiction depends exclusively, on the constitution and the terms of statute passed in pursuance thereof (Mossman v. Higgenson, 4 Dall. 12; Hodgson v. Bowerbank, 5 Cranch, 303; Bank of United States v. Devaux, 5 Cranch, 61; American Ins. Co. v. Canter, 1 Peters, 511; Livingston v. Jefferson, 1 Brock, 203; Fed. Cas. No. 8411; United States v. Drennen, Hemp. 320; Fed. Cas. No. 14992; United States v. Alberti, Hemp. 444; Fed. Cas. No. 14426), or by treaty. (United States v. New Bedford Bridge, 1 Wood. & M. 437; Fed. Cas. No. 15867; The British Prisoners, 1 Wood. & M. 66; Fed. Cas. No. 12734; Smith v. Jackson, 1 Paine, 453; Fed. Cas. No. 13064.) The United States courts can exercise only that jurisdiction conferred on them by Congress. (Ex parte Cabrera, 1 Wash. C. C. 235; Fed. Cas. No. 2278; Magill v. Parsons, 4 Conn. 325.) They cannot exercise common-law jurisdiction in criminal cases (Ex parte Bollman, 4 Cranch. 75; United States v. Hudson, 7 Cranch, 32; United States v. Coolidge, 1 Wheat. 415; 1 Gall. 488; Fed. Cas. No. 10422; United States v. Bevans, 3 Wheat. 336; *contra*, United States v. Ravara, 2 Dall. 297; Fed. Cas. No. 16122; United States v. Worrall, 2 Dall. 384; Fed. Cas. No. 16766), nor proceed by information in criminal cases unless the power is granted by Congress. (United States v. Joe, 4 Chic. L. N. 105; Fed. Cas. No. 15478.) They are of limited jurisdiction but not inferior, and can exercise no jurisdiction which is not expressly

granted or conferred by necessary implication (*Turner v. Bank of North America*, 4 Dall. 9; *United States v. Ta-wanga-ca*, Hemp. 304; Fed. Cas. No. 16435), as the power to punish for contempt. (*Matter of Meador*, 1 Abb. U. S. 324; Fed. Cas. No. 9375; *United States v. Hudson*, 7 Cranch, 32.) Their respective jurisdictions must be defined by Congress (*Osborn v. Bank of United States*, 9 Wheat. 738; *Turner v. Bank of North America*, 4 Dall. 10; *McIntyre v. Wood*, 7 Cranch, 506; *Kendall v. United States*, 12 Peters, 616; *Cary v. Curtis*, 3 How. 245; *Shelden v. Sill*, 8 How. 448), and cannot be enlarged or restricted by State laws. (*Livingston v. Jefferson*, 1 Brock. 203; Fed. Cas. No. 8411; *United States v. Drennan*, Hemp. 320; Fed. Cas. No. 14992; *Greely v. Townsend*, 25 Cal. 604; *Mexican Cent. Ry. Co. v. Pinkney*, 149 U. S. 194.) Parties cannot confer jurisdiction upon the courts by stipulation. (*Olds Wagon Works v. Benedict*, 32 U. S. App. 116; 67 Fed. 1; *Byers v. McAuley*, 149 U. S. 608.) The federal courts have the right to determine their own jurisdiction. *United States v. Peters*, 5 Cranch, 115; *United States v. Booth*, 21 How. 506; *Freeman v. Howe*, 24 How. 459; *Ex parte Tyler*, 149 U. S. 164.) Congress may consent to a second trial of a claim against the United States, although a judgment thereon has been rendered for the government. (*Nock v. United States*, 2 Ct. of Cl. 451.) Congress has power to invest inferior courts with power to issue writs of mandamus (*Kendall v. United States*, 12 Peters, 524), but it cannot empower a commissioner to commit a person for an alleged contempt. (*Ex parte Doll*, 7 Phila. 595, Fed. Cas. No. 3968.) The federal courts cannot apply the writ of *habeas corpus* to one in jail unless confined under and by authority of the United States (*Ex parte Des Rochers*, McAll. 68; Fed. Cas. No. 3824); and State courts have no authority to issue

the writ within the limits of the sovereignty of the United States. (*Ableman v. Booth*, 21 How. 506.) Federal courts have the power to issue writs only when necessary in aid of their jurisdiction in a case pending. (*Ex parte Everts*, 1 Bond, 178; *Fed. Cas. No. 4581*, overruling *U. S. v. Williamson*, 4 Am. Law R. 11.) Congress may make provision for the appointment of a board of land commissioners to settle private land claims. (*U. S. v. Ritchie*, 17 How. 525.) To give jurisdiction to a federal court it is sufficient that the jurisdiction may be found in the Constitution or the law, but the two must co-operate, the Constitution as the fountain, and the laws of Congress as the streams which convey jurisdiction to the court. (*United States v. Burlington etc. Ferry Co.*, Dist. Ct. Iowa, 21 Fed. Rep. 331.) The jurisdiction must appear of record. (*Norton v. Brewster*, 23 Fed. Rep. 840; *Grace v. Am. Cent. Ins. Co.*, 109 U. S. 283; *Bors v. Preston*, 111 U. S. 252; *Mansfield etc. R. R. Co. v. Swan*, 111 U. S. 382; *King Iron Bridge etc. Co. v. County of Otoe*, 124 U. S. 459; *Fishback v. Western Union Tel. Co.*, 161 U. S. 96.) New rights and remedies may have the effect to increase the business of the court, but that in no proper sense increases its jurisdiction. (*Buford v. Holley*, 28 Fed. Rep. 680.)

Original jurisdiction.—The first clause of this provision declares the extent of the judicial power (*Pennsylvania v. Quicksilver Co.*, 10 Wall. 553; *Delafield v. State*, 2 Hill, 159), which Congress cannot abridge or extend (*Marbury v. Madison*, 1 Cranch, 137; *Ex parte Vallandigham*, 1 Wall. 252; *Ex parte Yerger*, 8 Wall. 98); nor can Congress confer original jurisdiction in cases other than those enumerated. (*Matt. of Metzger*, 5 How. 176; *In re Kaine*, 14 How. 103; 3 Blatch. 1; *Fed. Cas. No. 7597*.) The jurisdic-

tion of the Supreme Court is both original and exclusive. (*U. S. v. Ortega*, 11 Wheat. 467; *Houston v. Moore*, 5 Wheat. 1; *Marbury v. Madison*, 1 Cranch, 137; *Osborn v. Bank of U. S.*, 9 Wheat. 738; but see *U. S. v. Ravara*, 2 Dall. 297; Fed. Cas. No. 16122; *Chisholm v. Georgia*, 2 Dall. 419; *The Exchange v. McFadden*, 7 Cranch. 116), and coextensive with the judicial power (*Osborn v. Bank of U. S.*, 9 Wheat. 738); but special and limited, confined to particular causes, controversies, and parties. (*Rhode Island v. Massachusetts*, 12 Peters, 657.) It has no jurisdiction over questions of a political character. (*Cherokee Nation v. Georgia*, 5 Peters, 1; *State v. Stanton*, 6 Wall. 50.) In the absence of legislation by Congress, the court may prescribe the mode and form of proceedings, so as to attain the object for which jurisdiction was given. (*Florida v. Georgia*, 17 How. 478.) It is left to Congress to organize the Supreme Court, to define its powers consistently with the Constitution, and to distribute the residue between it and the inferior courts. (*Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264; *Osborn v. Bank of U. S.*, 9 Wheat. 738; *Chisholm v. Georgia*, 2 Dall. 419; *Rhode Island v. Massachusetts*, 12 Peters, 657.) Although the Constitution vests in the supreme court jurisdiction in suits affecting ambassadors, ministers, and consuls, Congress may vest a concurrent jurisdiction in such inferior courts as may be established. (*U. S. v. Ravara*, 2 Dall. 297; Fed. Cas. No. 16122; *St. Luke's Hospital v. Barclay*, 3 Blatchf. 259; Fed. Cas. No. 12241; *Graham v. Stucken*, 4 Blatchf. 50; Fed. Cas. No. 5677; *Gittings v. Crawford*, Taney, 1; Fed. Cas. No. 5465; but see *Davis v. Packard*, 6 Peters, 41; *Mannhardt v. Souderstrom*, 1 Binn. 138; *Griffin v. Dominguez*, 2 Duer, 656; *Commonwealth v. Kosloff*, 5 Serg. & R. 545.) A State court has no jurisdiction over an offense committed by a consul (Common-

wealth v. Kosloff, 5 Serg. & R. 545); but an indictment against a private person for an assault upon an ambassador or public minister is not a case affecting such minister. (U. S. v. Ortega, 11 Wheat. 467.) The original jurisdiction, in cases where a State is a party, refers to cases where jurisdiction might be exercised by reason of the character of the party in any suit in a federal court (Cohens v. Virginia, 6 Wheat. 264), and it must be a case where the State is nominally a party and substantially affected (Fowler v. Lindsey, 3 Dall. 411; New Jersey v. New York, 5 Peters, 287; Cherokee Nation v. Georgia, 5 Peters, 1; Ex parte Madrazo, 7 Peters, 627; Rhode Island v. Massachusetts, 12 Peters, 657; Pennsylvania v. Wheeling etc. Br., 18 How. 421), a party to the record (Bank of U. S. v. Planters' Bank, 9 Wheat. 904), or if it has a direct interest in the controversy (Pennsylvania v. Wheeling etc. Br., 9 How. 647; 13 How. 518), where disputes and controversies arise between the respective States (Chancely v. Bailey, 37 Ga. 532), as on questions of boundaries. (Rhode Island v. Massachusetts, 12 Peters, 657; Florida v. Georgia, 17 How. 478; Virginia v. West Virginia, 11 Wall. 39; New York v. Connecticut, 4 Dall. 1.) A State may bring an original suit against a citizen of another State, but not against one of her own (Pennsylvania v. Quicksilver Co., 10 Wall. 553; Cohens v. Virginia, 6 Wheat. 264), though a State may be authorized to sue in the inferior courts. (State v. Atkins, 35 Ga. 315; contra, State v. Trustees, 5 Bank. Reg. 466; Fed. Cas. No. 10318; 1 Hughes, 133.) Where the State is a party, it may be represented by the governor. (Kentucky v. Dennison, 24 How. 66.) The supreme court has no jurisdiction in a case where a State is enforcing its penal laws (Cohens v. Virginia, 6 Wheat. 264), nor in a proceeding by an alien against a citizen. (Ex parte Barry, 2 How. 65.) The constitutional

grant of original jurisdiction to the supreme court of all cases affecting consuls, does not prevent Congress from conferring original jurisdiction in such cases, also, upon the subordinate courts of the Union. (*Bors v. Preston*, 111 U. S. 252.)

Equity jurisdiction.—The equity jurisdiction of the federal courts is independent of that conferred by the States upon their own courts, and cannot be affected by any legislature except that of the United States. (*Borer v. Chapman*, 119 U. S. 587; *Mississippi Mills v. Cohn*, 150 U. S. 202; *American Assn. L't'd v. Eastern Kentucky L. Co.*, 68 Fed. Rep. 721; *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S. 371; *Sheffield Furnace Co. v. Witherow*, 149 U. S. 574; *Hayes v. Pratt*, 147 U. S. 557; *Morrow Shoe Mfg. Co. v. New England Shoe Co.*, 18 U. S. App. 616; 60 Fed. Rep. 341.) But the provisions of the State statute may be observed to the extent to which the court is authorized to exercise a discretion, within the general rules of equity jurisprudence. (*Massachusetts Benefit Life Assn. v. Lohmiller*, 46 U. S. App. 103; 74 Fed. Rep. 23.) The equity jurisdiction is the same as the high court of chancery in England possesses. (*Mississippi Mills v. Cohn*, 150 U. S. 202.)

Authority of State courts.—The jurisdiction of State courts is not taken away except as to cases where such jurisdiction would be incompatible with the powers granted to the United States. (*Martin v. Hunter*, 1 Wheat. 304; *Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169; *Teal v. Felton*, 12 How. 284; *State v. Randall*, 2 Aik. 89; *Delafield v. State*, 2 Hill, 159; *U. S. v. Lathrop*, 17 Johns. 4; *Jackson v. Rose*, 2 Va. Cas. 34; *Clafin v. Houseman*, 93 U. S. 130.) The fact that the subject of interstate commerce is beyond legislative control does not, ipso facto, prevent the courts of the State from exercising jurisdiction over

cases arising from such commerce. (*Murray v. Chicago & N. W. Ry. Co.*, 62 Fed. Rep. 24.) Where federal courts have paramount jurisdiction, State courts are expressly prohibited from taking cognizance (*Slocum v. Mayberry*, 2 Wheat. 1; *Osborn v. Bank of U. S.*, 9 Wheat. 738; *U. S. v. Peters*, 5 Cranch, 115; *Duncan v. Darst*, 1 How. 301; *McNutt v. Bland*, 2 How. 16; *Bank of Augusta v. Earle*, 13 Peters, 590), and proceedings in a State court in such cases are void (*Cohen v. Solomon*, 66 Fed. Rep. 411); so, a State statute authorizing proceedings in rem for causes in admiralty is unconstitutional. (*Crawford v. The Caroline Reed*, 42 Cal. 469; *In re Brinkman*, 7 Bank. Reg. 421; Fed. Cas. No. 1884; *Bird v. The Josephine*, 39 N. Y. 19; *Brookman v. Hamill*, 43 N. Y. 554; *The Belfast*, 7 Wall. 624, overruling *Richardson v. Cleveland*, 5 Port. 251; *Monroe v. Brady*, 7 Ala. 59; *The Farmer v. McCraw*, 31 Ala. 659; *The Belfast*, 41 Ala. 50.) Congress cannot confer jurisdiction on a State tribunal. (*Huber v. Reily*, 53 Pa. St. 112.) The jurisdiction of the State is co-extensive with the Territory (*U. S. v. Bevans*, 3 Wheat. 386; *Scott v. Sandford*, 19 How. 610); but a State legislature cannot confer jurisdiction upon federal courts, or prescribe the means or mode of its exercise. (*Greely v. Townsend*, 25 Cal. 604.) No part of the criminal jurisdiction can be delegated to State tribunals (*Martin v. Hunter*, 1 Wheat. 304; *State v. Wells*, 2 Hill (S. C.) 687; *Huber v. Reily*, 53 Pa. St. 112; *State v. McBride*, Rice, 400; *Commonwealth v. Feely*, 1 Va. Cas. 321), but a crime not made an offense by an act of Congress is cognizable in a State court. (*State v. Buchanan*, 5 Har. & J. 317.) So State courts may punish for counterfeiting under a State law, unless exclusive jurisdiction is vested in the federal courts. (*White v. Commonwealth*, 4 Binn. 418; *State v. Randall*, 2 Aik. 89; *State v. Tutt*, 2 Bailey, 44.) A State court cannot grant an injunc-

tion against the enforcement of remedies adjudged by a federal court when the federal court acquired jurisdiction first. (*Central Nat. Bank v. Stevens*, 169 U. S. 462.) A State court has jurisdiction to punish the forgery of a land warrant, where it has not been made a crime by act of Congress. (*Commonwealth v. Schaffer*, 4 Dall. App. 26.) State courts may entertain an action to recover a penalty for breach of a federal statute. (*Claffin v. Houseman*, 93 U. S. 130; *Stearns v. U. S.*, 2 Paine, 300; Fed. Cas. No. 13341; *Buckwalter v. U. S.*, 11 Serg. & R. 193. But see *Ely v. Peck*, 7 Conn. 239; *Davidson v. Champlin*, 7 Conn. 244; *Haney v. Sharp*, 1 Dana, 442; *U. S. v. Lathrop*, 17 Johns. 4; *Jackson v. Rose*, 2 Va. Cas. 34.) A State magistrate may commit a prisoner to be delivered over for prosecution to the United States. (*Prigg v. Commonwealth*, 16 Peters, 539; *Ex parte Gist*, 26 Ala. 156; *Ex parte Smith*, 5 Cowen, 273; *Ex parte Martin*, 2 Paine, 348; Fed. Cas. No. 9154; *Ex parte Pool*, 2 Va. Cas. 276.)

Transfer of causes.—Congress may transfer a suit from one inferior tribunal to another. (*Stuart v. Laird*, 1 Cranch, 299; *United States v. Ritchie*, 17 How. 525; *Fremont v. United States*, 17 How. 542.) It may also provide for the removal of causes from State to federal courts. (*Martin v. Hunter*, 1 Wheat. 304; *Mayor v. Cooper*, 6 Wall. 247; *Railroad Co. v. Whitton*, 13 Wall. 270; *Murray v. Patrie*, 5 Blatchf. 343; Fed. Cas. No. 9967; *Fisk v. U. P. R. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4821; *Clark v. Dick*, 1 Dill. 8; Fed. Cas. No. 2818; *Johnson v. Monell*, Woolw. 390; Fed. Cas. No. 7399; *McCormick v. Humphrey*, 27 Ind. 144; *Tod v. Fairfield*, 15 Ohio St. 377; *Hodgson v. Millward*, 3 Grant, 418; Fed. Cas. No. 6568; *Kulp v. Ricketts*, 3 Grant, 420; *Greely v. Townsend*, 25 Cal. 604.) This power is only given by implication; it is the indi-

rect means by which Federal courts acquire jurisdiction. (*Railroad Co. v. Whitton*, 13 Wall. 270; *Martin v. Hunter*, 1 Wheat. 304.) A case may be removed from a State to a federal court where it arises under the Constitution and laws of the United States, as well as where it arises between citizens of the different States. (*Kulp v. Ricketts*, 3 Grant, 420.) Congress may determine at what time its power may be invoked, and at what stage of the proceedings a trial may be removed to the federal courts. (*Gaines v. Fuentes*, 92 U. S. 10.) No State can take away the privilege conferred upon citizens of other States to sue in the federal courts, by providing a special remedy in its own courts. (*Mason v. Boom Co.*, 3 Wall. Jr. 252; *Fed. Cas. No. 9232*.) Parties cannot by agreement oust jurisdiction in the federal judiciary. (*Davis v. Packard*, 6 Peters, 41; 7 Peters, 276; *Ducat v. Chicago*, 10 Wall. 415; *Cobb v. N. E. Ins. Co.*, 6 Gray, 192; *Hobbs v. Manhattan Ins. Co.*, 56 Me. 421.) A statute requiring an agreement from a foreign corporation not to remove a cause is void (*Morse v. Ins. Co.*, 20 Wall. 496; *Railroad Co. v. Pierce*, 27 Ohio St. 155; *Doyle v. Continental Ins. Co.*, 94 U. S. 535; *Hartford F. Ins. Co. v. Doyle*, 6 Biss. 463; *Fed. Cas. No. 6160*; but see *Cont. Ins. Co. v. Kasey*, 13 Alb. L. J. 311; *N. Y. Life Ins. Co. v. Best*, 23 Ohio St. 105); but if a license to transact business in a State is made to depend on the condition that the corporation shall not remove any case from a State to a federal court, the State may revoke it if such removal is made. (*State v. Doyle*, 40 Wis. 175; *Doyle v. Continental Ins. Co.*, 15 Alb. L. J. 267; but see *Hartford F. Ins. Co. v. Doyle*, 6 Biss. 461; *Fed. Cas. No. 6160*. See as to transfer into the federal courts of all suits in the United States provisional court for the State of Louisiana, *Edwards v. Tanneret*, 12 Wall. 446.)

§ 2. **Extent of judicial power.**—The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, to all cases affecting ambassadors, other public ministers, and consuls to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects. (U. S. Const. art. 3, sec. 2, cl. 1.)

Jurisdiction.—"Shall extend" is used in an imperative sense, and imports an absolute grant of power. (*Martin v. Hunter*, 1 Wheat. 304.) There are three classes of cases enumerated. In the latter class as to controversies, Congress may qualify the jurisdiction, either original or appellate. (*Martin v. Hunter*, 1 Wheat. 304; *The Moses Taylor*, 4 Wall. 411.) How jurisdiction shall be acquired, whether original or appellate, and the mode of procedure, are left to the wisdom of the legislature (*Mayor v. Cooper*, 6 Wall. 247); so Congress may give the federal courts original jurisdiction in any case to which appellate jurisdiction extends (*Osborn v. Bank of U. S.*, 9 Wheat. 738); and may lawfully provide for suits, at the option of the parties, on all controversies between citizens of the different States. (*Gaines v. Fuentes*, 92 U. S. 10.) When a question within the judicial power becomes an ingredient of the cause, Congress may give the federal courts jurisdiction. (*Osborn v. Bank of U. S.*,

9 Wheat. 738.) The questions which the case involves must determine its character. (*Osborn v. Bank of U. S.*, 9 Wheat. 738.) Congress may provide that a national bank may sue and be sued in the national courts. (*Osborn v. Bank of U. S.*, 9 Wheat. 738; *Bank of U. S. v. Northumberland Bank*, 4 Wash. C. C. 108; Fed. Cas. No. 931; 4 Conn. 333; *Magill v. Parsons*, 4 Conn. 317; *Bk. of U. S. v. Roberts*, 4 Conn. 323; Fed. Cas. No. 934.) The judicial power is the instrument provided in administering security to an officer acting in discharge of his duty. (*Hodgson v. Millward*, 3 Grant, 412; Fed. Cas. No. 6568.) It covers every legislative act of Congress. (*Ableman v. Booth*, 21 How. 506; 3 Wis. 1; *Mayor v. Cooper*, 6 Wall. 247.) It is the final arbiter of constitutional construction (*Vanhorne's Lessee v. Dorrance*, 2 Dall. 304; *Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264; *Ableman v. Booth*, 21 How. 506; 3 Wis. 1), and may receive from the legislature the power to construe every constitutional law. (*Osborn v. Bank of U. S.*, 9 Wheat. 738; *Bank of U. S. v. Roberts*, 4 Conn. 323; *Hodgson v. Millward*, 3 Grant, 412; Fed. Cas. No. 6568.) For the judicial power to extend to a violation of the Constitution, it must be "a case in law or in equity" in which a right under such law is asserted in a court of justice. (*Cohens v. Virginia*, 6 Wheat. 264.) Seeking protection under a law is a case arising under that law. (*Hodgson v. Millward*, 3 Grant, 412; Fed. Cas. No. 6568; *Kulp v. Ricketts*, 3 Grant, 420.) The judicial power is unavoidably in some cases exclusive of all State authority, and in others may be made so at the election of the legislative body. (*Martin v. Hunter*, 1 Wheat. 304; *The Moses Taylor*, 4 Wall. 411.) The jurisdiction of the federal courts in the first three classes of cases in this section is exclusive (*State v. McBride*, Rice, 400); so as to questions arising on

treaties, when not political questions. (*Wilson v. Wall*, 6 Wall. 83; *Ex parte Leon*, 1 Edm. Sel. Cas. 301; *U. S. v. Lathrop*, 17 Johns. 9; *U. S. v. Campbell*, 6 Hall. L. J. 113; *Haney v. Sharp*, 1 Dana, 442.) Congress may grant exclusive jurisdiction in the United States courts over suits arising under the laws of the United States. (*Fox v. Ohio*, 5 How. 410; *Voorhees v. Frisbie*, 8 Bank. Reg. 154.) So far as the provisions of a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, they are subject to such acts as Congress may pass for their enforcement, modification, or repeal. (*Edye v. Robertson*, 112 U. S. 580.)

Question arising under the constitution, etc.—Extent of judicial power.—A case in law or equity consists of the right of one party as well as of the other, and it arises when its correct decision depends on the construction of the Constitution or laws of the United States. (*Cohens v. Virginia*, 6 Wheat. 379; *U. S. v. Williams*, 4 Cranch C. C. 372; *Fed. Cas. No. 16712*; *Osborn v. Bank of United States*, 9 Wheat. 738; *Jones v. Seward*, 41 Barb. 272; *Ex parte Milligan*, 4 Wall. 114.) It is a suit instituted according to the regular course of judicial procedure (*Marbury v. Madison*, 1 Cranch, 138; *Owings v. Norwood*, 5 Cranch, 344; *Martin v. Hunter*, 1 Wheat. 304; *Cohens v. Virginia*, 6 Wheat. 264); it is limited to such as are between parties or are of a judicial nature (*Luther v. Borden*, 7 How. 1; *U. S. v. Ferreira*, 13 How. 40), and does not include political questions. (*Luther v. Borden*, 7 How. 1.) When the subject matter of a controversy is political, it is beyond the domain of the judiciary, as where it involves the existence *de jure* of the government, or the legality of some act or proceeding purely governmental. (*Georgia v. Stanton*, 6 Wall.

50.) Cases at law include suits in which legal rights are to be ascertained and determined as distinguished from those where equitable rights are administered (Parsons v. Bedford, 3 Peters, 447; Fenn v. Holme, 21 How. 486; and see Strother v. Lucas, 6 Peters, 768; Parish v. Ellis, 16 Peters, 453; Bennett v. Butterworth, 11 How. 669; Sherbourne v. De Cordova, 24 How. 423); or where the proceeding is in admiralty (Parsons v. Bedford, 3 Peters, 447; Robinson v. Campbell, 3 Wheat. 212); but a case can only be considered when the subject matter is submitted in the form prescribed by law (Robinson v. Campbell, 3 Wheat. 212; Osborn v. Bank of United States, 9 Wheat. 738; Parsons v. Bedford, 3 Peters, 433), and the record must show that the Constitution or some law or treaty is drawn in question. (Lawler v. Walker, 14 How. 149; Mills v. Brown, 16 Peters, 525; Railroad Co. v. Rock, 4 Wall. 180; Ryan v. Thomas, 4 Wall. 603.) The pleadings need not show what particular clause of the Constitution is in question. (Crystal Springs L. & W. Co. v. City of Los Angeles, 76 Fed. Rep. 148.) The United States courts have no jurisdiction of offenses at common law. (Ex parte Bollman, 4 Cranch, 75; Turner v. Bank of N. A., 4 Dall. 10; U. S. v. Lancaster, 2 McLean, 431; Fed. Cas. No. 16556; Kitchen v. Strawbridge, 4 Wash. C. C. 84; Fed. Cas. No. 7854; U. S. v. New Bedford Bridge, 1 Wood. & M. 401; Fed. Cas. No. 15867.) Suits in which relief is sought according to the principles and practice of equity jurisdiction are "cases in equity." (Robinson v. Campbell, 3 Wheat. 212; U. S. v. Howland, 4 Wheat. 108; Lorman v. Clarke, 2 McLean, 568; Fed. Cas. No. 8516; Gordon v. Hobart, 2 Sum. 401; Fed. Cas. No. 5609; Pratt v. Northam, 5 Mason, 95; Fed. Cas. No. 11376; Cropper v. Coburn, 2 Curt. 465; Fed. Cas. No. 3416.) The equity jurisdiction is the same as that of the high court of chancery in England.

(*Mississippi Mills v. Cohn*, 150 U. S. 202; *Sheffield Furnace Co. v. Witherow*, 149 U. S. 574.) The true test is whether there is a plain, adequate, and complete remedy at law in the same court. (*U. S. v. Howland*, 4 Wheat. 108; *Boyce v. Grundy*, 3 Peters, 215; *Gaines v. Chew*, 2 How. 619; *Williams v. Benedict*, 8 How. 107.) It extends over cases in State courts and over statutes, whether passed by a State legislature or by Congress, and which are claimed to be in contravention of the Constitution of the United States. (*Calder v. Bull*, 3 Dall. 399; *Marbury v. Madison*, 1 Cranch, 137; *Dartmouth College v. Woodward*, 4 Wheat. 625; *Crystal Springs L. & W. Co. v. City of Los Angeles*, 76 Fed. Rep. 148; *Parsons v. District of Columbia*, 170 U. S. 45), but not to statutes claimed to be void under a State constitution. (*Calder v. Bull*, 3 Dall. 392.) The judiciary can only inquire whether the means devised by Congress in the execution of a power granted are forbidden by the constitution. (*Interstate Commerce Comm. v. Brimson*, 154 U. S. 447.) To bring an act within the control of the judiciary, it must be clearly subversive of the constitution. (*Turner v. Althaus*, 6 Neb. 54.) The objection must not be doubtful (*U. S. v. Jackson*, 3 Sawy. 59; *Fed. Cas. No. 15459*; *People v. Brinkerhoff*, 68 N. Y. 259), but a clear violation of the constitution. (*C. C. R. R. Co. v. Twenty-third St. R. R. Co.*, 54 How. Pr. 168; *Bennington v. Park*, 50 Vt. 178.) The question as to the title to property conferred by treaty is a political question, and its decision by the political department is conclusive on the judiciary (*Foster v. Neilson*, 2 Peters, 309; *U. S. v. Arredondo*, 6 Peters, 711; *Garcia v. Lee*, 12 Peters, 520; *Williams v. Suffolk Ins. Co.*, 13 Peters, 419; *Luther v. Borden*, 7 How. 56); so the protection of Indians in their possessions (*Cherokee Nation v. Georgia*, 5 Peters. 20). and as to State boundaries (*Rhode Island v. Massa-*

chusetts, 12 Peters, 736; *Garcia v. Lee*, 12 Peters, 520), and as to political treaties (*Luther v. Borden*, 7 How. 56), and as to the recognition of foreign governments are political questions. (*Williams v. Suffolk Ins. Co.*, 13 Peters, 419; *Cherokee Nation v. Georgia*, 5 Peters, 20; *Rose v. Himely*, 4 Cranch, 241; *U. S. v. Palmer*, 3 Wheat. 610; *Gelston v. Hoyt*, 3 Wheat. 246; *The Divina Pastora*, 4 Wheat. 64.) The recognition of the existence of a government is conclusive of its public character. (*Du Pont v. Pichou*, 4 Dall. 321; *U. S. v. Ortega*, 4 Wash. C. C. 531; *Fed. Cas. No. 15971*.) The jurisdiction extends to all cases affecting ambassadors, etc., although they are not parties to the record. (*Osborn v. Bank of U. S.*, 9 Wheat. 738; *U. S. v. Ortega*, 11 Wheat. 467; *U. S. v. Ravara*, 2 Dall. 297; *Fed. Cas. No. 16122*.) If the right of property in the subject matter is given or created by an act of Congress, it is within the judicial power of the United States (*Bank of U. S. v. Roberts*, 4 Conn. 323; *Fed. Cas. No. 934*); but the State courts may entertain jurisdiction of cases arising under the laws of the United States upon principles of comity, which authorize the courts of every civilized State to administer law and justice to suitors. (*Houston v. Moore*, 5 Wheat. 1; 3 Serg. & R. 169; *Clafin v. Houseman*, 93 U. S. 130; *Bank of U. S. v. Roberts*, 4 Conn. 323; *Fed. Cas. No. 934*; *Jackson v. Rose*, 2 Va. Cas. 34.) Congress may give the circuit courts original jurisdiction in any case to which the appellate jurisdiction attaches. (*U. S. v. Bevans*, 3 Wheat. 336; *Osborn v. Bank of U. S.*, 9 Wheat. 821; *Jones v. Seward*, 41 Barb. 272.)

As to persons.—The judicial power extends to controversies to which the United States shall be a party, embracing civil suits, but not to suits against the executive to prevent the enforcement of reconstruction laws. (*Mississippi v. Johnson*, 4 Wall. 498;

Georgia v. Stanton, 6 Wall. 50.) It extends to suits where a State is a party (N. Y. v. Conn., 4 Dall. 1; N. J. v. N. Y., 5 Peters, 290; Georgia v. Brailsford, 2 Dall. 402, 415; Oswald v. N. Y., 2 Dall. 415; Chisholm v. Georgia, 2 Dall. 419; Grayson v. Va., 3 Dall. 320; Mass. v. R. I., 12 Peters, 755; Gov. of Ga. v. Madrazo, 1 Peters, 122; Luther v. Borden, 7 How. 55; Mowrey v. Indiana & C. R. R. Co., 4 Biss. 80; Fed. Cas. No. 9891), but only when it is a party to the record (Osborn v. Bank of U. S., 9 Wheat. 738; N. Y. v. Conn., 4 Dall. 3; Fowler v. Lindsay, 3 Dall. 411; U. S. v. Peters, 5 Cranch, 115), and process is served on the chief executive and attorney-general of the State (Georgia v. Brailsford, 2 Dall. 402; 3 Dall. 1; Oswald v. New York, 2 Dall. 415; Chisholm v. Ga., 2 Dall. 419; N. J. v. N. Y., 5 Peters, 284; Grayson v. Virginia, 3 Dall. 320; Kentucky v. Ohio, 24 How. 96); or when the governor is sued in his official capacity. (Kentucky v. Ohio, 24 How. 97; Gov. of Georgia v. Madrazo, 1 Peters, 110.) It extends to controversies between two or more States (Osborn v. Bank of U. S., 9 Wheat. 738; Dundas v. Bowler, 3 McLean, 204; Fed. Cas. No. 4140), including suits to settle disputed boundaries (R. I. v. Mass., 12 Peters, 657; Ala. v. Ga., 23 How. 510; Brainard v. Williams, 4 McLean, 122; Fed. Cas. No. 1804), and it only applies to States that are members of the Union, and to public bodies owing obedience and conformity to its Constitution and laws (Scott v. Jones, 5 How. 377), Indian nations not being deemed States. (Cherokee Nation v. Ga., 5 Peters, 16; Snead v. Sellers, 30 U. S. App. 8; 66 Fed. Rep. 371.) It extends to controversies between a State and citizens of other States, but this does not include a suit by the citizens against the State. (Cohens v. Va., 6 Wheat. 406; see post, 11th Amend. note.) It extends to controversies between citizens of different States (Ohio & Miss. R. R. v. Wheeler, 1

Black. 286; but see *Hope Ins. Co. v. Boardman*, 5 Cranch, 57; the situation of the parties and not their character determines the jurisdiction (*Connolly v. Taylor*, 2 Peters, 556); and the condition of the parties at the commencement of the suit is not affected by a subsequent change. (*Ex parte Kyle*, 67 Fed. Rep. 306.) Citizenship, as to jurisdiction, means only residence (*Gassies v. Ballou*, 6 Peters, 761; *Shelton v. Tiffin*, 6 How. 163; *Lessee of Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Lessee of Butler v. Farnsworth*, 4 Wash. C. C. 101; Fed. Cas. No. 2240; contra, *Tug River Coal and Salt Co. v. Brigel*, 31 U. S. App. 665; 67 Fed. Rep. 625); and for this purpose a corporation is deemed a citizen of the State which charters it. (*Hope Ins. Co. v. Boardman*, 5 Cranch, 57; *U. S. Bk. v. Planters' Bank*, 9 Wheat 904; *Louisville etc. R. R. Co. v. Letson*, 2 How. 497; *Cumberland etc. Bank v. Slocomb*, 14 Peters, 60; *Marshall v. Balt. etc. R. R. Co.*, 16 How. 314; *Wheeden v. Camden etc. R. R. Co.*, 4 Am. Law. Rep. 296; *Bank of U. S. v. Devaux*, 5 Cranch, 61; *Barrow Steamship Co. v. Kane*, 170 U. S. 100.) This provision does not include an action against a State by a corporation created by act of Congress (*Smith v. Rackliffe*, 83 Fed. Rep. 983.) A corporation formed by the consolidation of two corporations of different States may be sued in the federal courts as a citizen of one of such States by a citizen of the other. (*Williams v. Krohn*, 31 U. S. App. 325; 66 Fed. Rep. 655.) A corporation collusively organized under the laws of one State by the members of a corporation of another State, for the purpose of bringing a suit in a federal court, cannot bring such suit. (*Lehigh Min. & Mfg. Co. v. Kelly*, 64 Fed. Rep. 401.) This clause does not embrace cases where one of the parties is a citizen of a Territory, or of the District of Columbia. (*Hepburn v. Ellzey*, 2 Cranch, 445; *New Orleans v. Winter*, 1 Wheat. 91; *Gassies v.*

Ballou, 6 Peters, 761; *Hartshorne v. Wright*, Peters C. C. 64; Fed. Cas. No. 6169; *Scott v. Jones*, 5 How. 376; *Barney v. Baltimore*, 6 Wall. 287; *Texas v. White*, 7 Wall. 737; *Railroad Co. v. Harris*, 12 Wall. 65; *Hooe v. Jamieson*, 166 U. S. 395; *Hooe v. Werner*, 166 U. S. 399.) Controversies between citizens claiming lands under grants of different States are within the jurisdiction, notwithstanding one of the States, at the time of the first grant, was a part of the other. (*Town of Pawlet v. Clark*, 9 Cranch, 292.) It is the grant which passes the legal title and authorizes jurisdiction. (*Colson v. Lewis*, 2 Wheat. 377.) This clause gives jurisdiction where foreign States or individual foreigners are parties (*Chappedelaine v. Dechenaux*, 4 Cranch, 308; *Brown v. Strode*, 5 Cranch, 303), but an Indian tribe is not a foreign nation within this provision. (*Cherokee Nation v. Ga.*, 5 Peters, 1; *Worcester v. Ga.*, 6 Peters, 515.) The federal courts have jurisdiction to entertain a suit brought by the United States as guardian of Indians who have never become citizens. (*United States v. Boyd*, 68 Fed. Rep. 577.) The controversy, in order to give jurisdiction, must be one in which a citizen of a State and an alien are parties (*Hepburn v. Ellzey*, 2 Cranch, 445; *New Orleans v. Winter*, 1 Wheat. 91; *Gassies v. Ballou*, 6 Peters, 761; *Brown v. Keene*, 8 Peters, 112; *Picquet v. Swan*, 4 Mason, 443; Fed. Cas. No. 11133; 5 Mason, 35; Fed. Cas. No. 11134; *Case v. Clarke*, 5 Mason, 70; Fed. Cas. No. 2490; *Wilson v. City Bank*, 5 Bank. Reg. 270; *Catlett v. Pac. Ins. Co.*, 1 Paine, 594; Fed. Cas. No. 2517; *Lessee of Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Prentiss v. Brennan*, 2 Blatch. 164; Fed. Cas. No. 11385; *Chappedelaine v. Dechenaux*, 4 Cranch, 306), or a nominal citizen suing for the use of an alien. (*Brown v. Strode*, 5 Cranch, 303.) So, a foreign corporation is an alien. (*Society for Prop. of Gosp. v. N. H.*, 8

Wheat. 464; *Comml. etc. Bank v. Slocomb*, 14 Peters, 60.) The opposing party must be a citizen, and it must so appear on the record. (*Jackson v. Twenty-men*, 2 Peters, 136; *Baird v. Byrne*, 3 Wall. Jr. 1; Fed. Cas. No. 757.) At common law an alien cannot maintain a real action (*Jones v. McMasters*, 20 How. 20; *Lanfear v. Hunley*, 4 Wall. 209; *McDonogh v. Mil-laudon*, 3 How. 693; *Semple v. Hager*, 4 Wall. 433; *Barges v. Hogg*, 1 Hayw. 485; *Orser v. Hoag*, 3 Hill, 79); the disability is personal. (*Kemp v. Kennedy*, 5 Cranch, 173; *Peters C. C.* 40; Fed. Cas. No. 7686.) This section does not include controversies between people of a State as to the formation or change of their constitution. (*Luther v. Borden*, 7 How. 55; *Mass. v. R. I.*, 12 Peters, 755.) A court may have jurisdiction as to parties and subject matter, yet if it makes a decree which is not within the powers granted to it by the laws of its organization, its decree is void. (*United States v. Walker*, 109 U. S. 258.)

Suits against States.—This provision was held to extend to all pending suits, as well as to future cases (*Hollingsworth v. Virginia*, 3 Dall. 378; *Cohens v. Vir-ginia*, 6 Wheat. 294; *Georgia v. Brailsford*, 2 Dall. 402; 3 Dall. 1), but applies only to original suits, and not to appeals or writs of error (*Cohens v. Virginia*, 6 Wheat. 264); nor does it extend to suits of admiralty or maritime jurisdiction. (*Olmstead's Case*, Bright. N. P. 9; *Ex parte Madrazo*, 1 Peters, 127.) The amendment is of necessity limited to those suits in which a State is a party to the record (*Osborn v. Bank of United States*, 9 Wheat. 738; *Chisholm v. Georgia*, 2 Dall. 419; *Cherokee Nation v. Georgia*, 5 Peters, 1; *U. S. v. Peters*, 5 Cranch, 115; *Davis v. Gray*, 16 Wall. 203; *Olmstead's Case*, Bright N. P. 9; *U. S. v. Bright*, Bright. N. P. 19; Fed. Cas. No. 14647; *Swasey v. N. C. R. R. Co.*, 1 Hughes 17; Fed. Cas.

No. 13679; 71 N. C. 571), or where the chief magistrate is sued in a claim upon him in his official character. (Governor of Georgia v. Madrazo, 1 Peters, 123.) The eleventh amendment provides that no suit shall be commenced or prosecuted against a State (U. S. v. Peters, 5 Cranch, 139; Osborn v. Bank of United States, 9 Wheat. 738), and for those cases only. (Cohens v. Virginia, 6 Wheat. 264.) If the State be not necessarily a defendant, although its interest may be affected, this amendment does not apply. (Fowler v. Lindsay, 3 Dall. 411; New York v. Connecticut, 3 Dall. 1; U. S. v. Peters, 5 Cranch, 139; Osborn v. Bank of United States, 9 Wheat. 738; Louisville etc. R. R. Co. v. Letson, 2 How. 550.) A State by becoming interested in a corporation lays down its sovereignty so far as respects the transactions of the corporation. (Briscoe v. Bank of Kentucky, 11 Peters, 324; Darrington v. Bank of Alabama, 13 How. 12; Curran v. Arkansas, 15 How. 309.) So a suit may be maintained against a corporation, although a State be a member thereof (Bank of United States v. Planters' Bank, 9 Wheat. 904; Louisville etc. R. R. Co. v. Letson, 2 How. 497), or even the sole corporator (Bank of Kentucky v. Wister, 2 Peters, 318; 3 Peters, 431.) A mere suggestion of title in the State to property in the possession of an individual will not prevent a Federal court from looking into the validity of the title; and if the court decides that the State has no title, the State cannot resist legal process in the case. (U. S. v. Peters, 5 Cranch, 115; Osborn v. Bank of United States, 9 Wheat. 738.) Although an independent sovereign cannot be sued (Osborn v. Bank of United States, 9 Wheat. 738), yet there is nothing in the Constitution to deprive a State court of jurisdiction over suits which it possessed before the Constitution was adopted. (Garr v. Bright, 1 Barb. Ch. 157.)

See post, § 3, note.

Admiralty and maritime.—The Constitution confers not only admiralty but all “maritime” jurisdiction. (*De Lovio v. Boit*, 2 Gall. 398; Fed. Cas. No. 3776; and see *The Seneca*, Gilp. 28; Fed. Cas. No. 3650; *The Huntress*, 2 Ware (Dav.) 82; Fed. Cas. No. 6914; *Kynoché v. The S. C. Ives*, Newb. 205; Fed. Cas. No. 7958.) “Maritime” was added to guard against a narrow interpretation of the word “admiralty.” (*Fretz v. Bull*, 12 How. 466; *The Hine v. Trevor*, 4 Wall. 555, 561; *The Moses Taylor*, 4 Wall. 411.) These words refer to the general system of maritime law familiar to this country when the Constitution was adopted (*N. J. S. N. Co. v. Merch. Bank*, 6 How. 344; *Waring v. Clarke*, 5 How. 441; *The Genesee Chief v. Fitzhugh*, 12 How. 443; *The Lottawanna*, 21 Wall. 558; *The Huntress*, 2 Ware (Dav.) 82; Fed. Cas. No. 6914), and regard must be had to our legal history, Constitution, legislation, usages, and adjudications. (*The St. Lawrence*, 1 Black. 522; *The Lottawanna*, 21 Wall. 576.) The grant was not intended to be limited to cases of admiralty jurisdiction in England when the Constitution was adopted. (*New Jersey Co. v. Merch. Bank*, 6 How. 344; *Waring v. Clarke*, 5 How. 441; *De Lovio v. Boit*, 2 Gall. 398; Fed. Cas. No. 3776; *The Seneca*, Gilp. 10, 34; Fed. Cas. No. 3650; *The Gold Hunter*, Blatchf. & H. 300; Fed. Cas. No. 5513; *Steel v. Thatcher*, 1 Ware, 91; Fed. Cas. No. 13348; *The Huntress*, 2 Ware (Dav.) 82; Fed. Cas. No. 6914; *Kynoché v. The C. S. Ives*, Newb. 205; Fed. Cas. No. 7958; *The Volunteer*, 1 Sum. 551; Fed. Cas. No. 16991.) The maritime law is a part of the common law. (*Thompson v. The Catharina*, 1 Pet. Adm. 104; Fed. Cas. No. 13949.) The term belongs to the law of nations as well as to domestic and municipal law. (*The Huntress*, 2 Ware (Dav.) 82; Fed. Cas. No. 6914.) Courts of admiralty act upon enlarged principles of equity rather than upon strict rules of the common

law. (*O'Brien v. Miller*, 168 U. S. 237.) The jurisdiction is entirely distinct from the power of Congress to regulate commerce. (*The Genesee Chief v. Fitzhugh*, 12 How. 443; *The Belfast*, 7 Wall. 624; *The Sarah Jane*, 1 Low. 203; Fed. Cas. No. 12349.) It makes the judicial coextensive with the legislative power (*The Huntress*, 2 Ware (Dav.) 82; Fed. Cas. No. 6914), and covers not merely the cognizance of the case, but the jurisprudence and principles by which it is administered. (*The Chusan*, 2 Story, 455; Fed. Cas. No. 2717.) The whole subject belongs exclusively to the general government (*The Chusan*, 2 Story, 455; Fed. Cas. No. 2717), and the jurisdiction in the Federal courts is exclusive. (*Martin v. Hunter*, 1 Wheat. 304; *Amer. Ins. Co. v. Canter*, 1 Peters, 511; *The Moses Taylor*, 4 Wall. 411; *The Hine v. Trevor*, 4 Wall. 555; *The Wave*, Blatchf. & H. 252; Fed. Cas. No. 17297.) The *Glide*, 167 U. S. 606. Jurisdiction in admiralty is expressly granted by the Constitution (*Carpenter v. The Emma Johnson*, 1 Cliff. 633; Fed. Cas. No. 2430), but its exercise depends on congressional legislation (*U. S. v. Bevans*, 3 Wheat. 337; *Jackson v. The Magnolia*, 20 How. 296), and Congress may limit or control it (*Carpenter v. The Emma Johnson*, 1 Cliff. 633; Fed. Cas. No. 2430), or modify the practice (*The Genesee Chief v. Fitzhugh*, 12 How. 443.) The term includes jurisdiction of all things done upon and relating to the sea, and all transactions relating to commerce and navigation, and to damages for injuries upon the high seas (*De Lovio v. Boit*, 2 Gall. 398; Fed. Cas. No. 3776; *The Young America*, Newb. 101; Fed. Cas. No. 12549), and to the navigable lakes and rivers of the United States (*The Genesee Chief v. Fitzhugh*, 12 How. 451), and to inland navigable waters, although not affected by the ebb and flow of the tide (*The Genesee Chief v. Fitzhugh*, 12 How. 451); but the grant does not ex-

tend to waters ceded to the several States, nor to the general jurisdiction over the same (*U. S. v. Bevans*, 3 Wheat. 337; *Smith v. Maryland*, 18 How. 71; *The Wave*, 2 Paine, 131; *Fed. Cas. No. 17300*; *Blatchf. & H.* 235; *Fed. Cas. No. 17297*; *Genesee Chief v. Fitzhugh*, 12 How. 443); so the power to regulate the fisheries was not surrendered by the grant of admiralty and maritime jurisdiction. (*Smith v. Maryland*, 18 How. 71; *Bennett v. Boggs*, *Bald.* 60; *Fed. Cas. No. 1319*; *Corfield v. Coryell*, 4 Wash. C. C. 371; *Fed. Cas. No. 3230*.)

Maritime contracts.—Admiralty and maritime jurisdiction embraces all maritime contracts, all torts committed in its jurisdiction (*Waring v. Clarke*, 5 How. 489; *Gloucester Ins. Co. v. Younger*, 2 Curt. 332; *Fed. Cas. No. 5487*; *De Lovio v. Boit*, 2 Gall. 398; *Fed. Cas. No. 3776*), and all suits for liens of materialmen and for services. (*The General Smith*, 4 Wheat. 438; *Gardner v. New Jersey*, 1 Peters Adm. 227; *Fed. Cas. No. 5233*; *Stevens v. The Sandwich*, 1 Peters, 233; *Davis v. A New Brig*, *Gilp.* 473; *Fed. Cas. No. 3643*; *Wick v. The Samuel Strong*, 6 McLean, 587; *Fed. Cas. No. 17607*; *The Robert Fulton*, 1 Paine, 620; *Fed. Cas. No. 11890*; *Zane v. The President*, 4 Wash. C. C. 453; *Fed. Cas. No. 18201*.) But a contract, made a lien by statute, for the construction of a vessel is not maritime, the vessel not yet having become engaged in commerce. (*The Richard Winslow*, 71 Fed. Rep. 426.) States cannot create maritime liens nor give their courts jurisdiction over them. (*The Belfast*, 7 Wall. 624.) It extends over contracts, though the voyage is within the State, and only on waters of the State (*The Belfast*, 7 Wall. 624; *The Mary Washington*, 1 Abb. U. S. 1; *Fed. Cas. No. 9229*; *The Leonard*, 3 Ben. 263; *Fed. Cas. No. 8256*; *Carpenter v. The Emma Johnson*, 1 Cliff. 633; *Fed. Cas. No. 2430*; *The Volunteer*, 1 Chic. L. N. 185;

Fed. Cas. No. 16990; *The Sarah Jane*, 1 Low. 203; Fed. Cas. No. 12349; but see, contra, *Maguire v. Card*, 21 How. 248; *Allen v. Newberry*, 21 How. 244; *New Jersey Co. v. Merchants' Bank*, 6 How. 344; *The Troy*, 4 Blatchf. 355; Fed. Cas. No. 14192; and over torts on navigable waters, though committed within the body of a county (*Roberts v. Skolfield*, 8 Am. Law Reg. 156; Fed. Cas. No. 11917); and over seizures for breach of revenue laws (*U. S. v. La Vengeance*, 3 Dall. 297; *U. S. v. The Sally*, 2 Cranch, 406; *N. J. S. N. Co. v. Merchants' Bank*, 6 How. 344); or for engaging in the rebellion (*Mrs. Alexander's Cotton*, 2 Wall. 404); and for all crimes and offenses against the laws of the United States. (*Corfield v. Coryell*, 4 Wash. C. C. 371; Fed. Cas. No. 3230; *U. S. v. Bevans*, 3 Wheat. 337.) A bond given to secure the performance of a maritime contract is itself a maritime contract and subject to maritime jurisdiction. (*Haller v. Fox*, 51 Fed. Rep. 298.) In cases purely dependent on locality it is limited to the sea, and to tide-waters as far as the tide flows, and up to high-water mark. (*U. S. v. Coombs*, 12 Peters, 72.) But a contract for services such as are usually performed by a ship's brokers and business agents, and performed upon land, is not a maritime contract. (*The Humboldt*, 86 Fed. Rep. 351.) States cannot by local legislation enlarge or limit the jurisdiction of the Federal courts (*The Belfast*, 7 Wall. 624; *The Chusan*, 2 Story, 455; Fed. Cas. No. 2717; *New Zealand Ins. Co. v. Earnmoor S. S. Co.*, 79 Fed. Rep. 369; *The H. E. Willard*, 53 Fed. Rep. 599; but see *The Glendale*, 77 Fed. Rep. 906; *The H. E. Emilie*, 70 Fed. Rep. 511; *The Glendale*, 42 U. S. App. 546; 81 Fed. Rep. 633); nor confer jurisdiction on them in cases not cognizable in admiralty. (*Crawford v. The Caroline Reed*, 42 Cal. 469.)

See post, § 49, et seq., and notes.

§ 3. **Suit against a State.**—The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. (U. S. Const. Amend. art. 11.)

Limit of judicial power—Suits against States.—The judicial power of the United States is limited to “cases” and “controversies” enumerated in article 3 of the Constitution as amended by article 11, and includes only suits of a civil nature. (The Pacific Railway Commission (Cal.) 32 Fed. Rep. 255; 12 Sawy. 559; *Chisholm v. Georgia*, 2 Dall. 431.) This provision was held to extend to all pending suits, as well as to future cases. (*Hollingsworth v. Virginia*, 3 Dall. 378; *Cohens v. Virginia*, 6 Wheat. 294; *Georgia v. Brailsford*, 2 Dall. 402; 3 Dall. 1.) It applies only to original suits (*Cohens v. Virginia*, 6 Wheat. 264); or to suits of admiralty, or maritime jurisdiction. (*Olmstead’s Case*, Bright. 9; *Ex parte Madrazo*, 7 Peters, 627.) This amendment is of necessity limited to those suits in which a State is a party to the record, or where the chief magistrate is sued in a claim upon him in his official character. It provides that no suit shall be commenced or prosecuted against a State, and for those cases only. (*Cohens v. Virginia*, 6 Wheat. 264; *Osborn v. Bank of U. S.*, 9 Wheat. 738; *Governor of Ga. v. Madrazo*, 1 Peters, 123; *Chisholm v. Georgia*, 2 Dall. 419; *Cherokee Nation v. Georgia*, 5 Peters, 1; *U. S. v. Peters*, 5 Cranch, 115; *Davis v. Gray*, 16 Wall. 203; *Olmstead’s Case*, Bright. 9; *U. S. v. Bright*, Bright. 19; Fed. Cas. No. 14647; *Swasey v. N. C. R. R. Co.*, 1 Hughes, 17; Fed. Cas. No. 13679; 71 N. C. 571.) Where a State is not only the real party to the controversy, but the real party against which relief is sought, the nominal de-

fendants being merely its officers and agents, it is substantially within the prohibition of the Eleventh Amendment. (*Hagood v. Southern*, 117 U. S. 52.) The judicial power, as limited by this amendment, cannot be extended by Congress. (*Re-Application Pacific R. Com. C. C. N. D. Cal.*, 32 Fed. Rep. 241, 12 Sawy. 559.) A suit against the officers of a State to compel them to perform its contracts is, in effect, a suit against the State itself, and cannot be maintained in a Federal court. (*Pennoyer v. McConaughy*, 140 U. S. 1; *Re Ayers*, 123 U. S. 443; *Louisiana v. Jumel*, 107 U. S. 711; *Antoni v. Greenhow*, 107 U. S. 769; *Cunningham v. Macon*, etc. R. Co., 109 U. S. 446; *Hagood v. Southern*, 117 U. S. 52; *Smith v. Rackliffe*, U. S. App., 87 Fed. Rep. 964; *Brown University v. Rhode Island College of Agriculture*, 56 Fed. Rep. 55.) But an action against a State officer to enforce a purely ministerial duty is not, within the meaning of the Eleventh Amendment, an action against the State. (*Pennoyer v. McConaughy*, 140 U. S. 1; *Osborn v. Bank of U. S.*, 22 U. S., 9 Wheat. 738; *Davis v. Gray*, 83 U. S., 16 Wall. 203; *Tomlinson v. Branch*, 82 U. S., 15 Wall. 460; *Litchfield v. Webster Co.*, 101 U. S. 773; *Allen v. Baltimore etc. R. Co.*, 114 U. S. 311; *Mutual Life Ins. Co. v. Boyle*, 82 Fed. Rep. 705; *Metropolitan Life Ins. Co. v. McNall*, 81 Fed. Rep. 888; *Sandford v. Gregg*, 58 Fed. Rep. 620.) The Federal courts have jurisdiction of a suit to restrain State officers from acting under a statute of a State claimed to violate the Federal Constitution and amendments. (*Mills v. Green*, 67 Fed. Rep. 818; *Cobb v. Clough*, 83 Fed. Rep. 604; *Cotting v. Kansas City Stock Yards Co.*, 79 Fed. Rep. 679; *President of Yale College v. Sanger*, 62 Fed. Rep. 177.) An action brought by a taxpayer who has duly tendered coupons which are lawful tender, in payment of his taxes,

against the person who, under color of office, proceeds by seizure and sale of the property of the plaintiff, is an action against him personally as a wrongdoer, and not against the State, within this article of the Constitution. (*Poindexter v. Greenhow*, 114 U. S. 270; *White v. Greenhow*, 114 U. S. 307; *Chaffin v. Taylor*, 114 U. S. 309.) Where a State has provided for suits against its treasurer for illegal taxes, such a suit, even if it be considered a suit against the State, may be brought in the Federal court when other jurisdictional facts exist, although the statutory provision may only apply to suits in the State courts. (*Reinhart v. McDonald*, 76 Fed. Rep. 403.) A suit against railroad commissioners for relief against alleged unjust and unreasonable rates for freight transportation, is not a proceeding against a State. (*Clyde v. Richmond & D. R. Co.*, 57 Fed. Rep. 436.) If the State be not necessarily a defendant, although its interest may be affected, this amendment does not apply. (*Fowler v. Lindsay*, 3 Dall. 411; *New York v. Connecticut*, 4 Dall. 1; *U. S. v. Peters*, 5 Cranch, 139; *Osborn v. Bank of United States*, 9 Wheat. 738; *Louisville etc. R. R. Co. v. Letson*, 2 How. 550; *State of Missouri v. Bowles Milling Co.*, 80 Fed. Rep. 161.) A State by becoming interested in a corporation lays down its sovereignty so far as respects the transactions of the corporation. (*Briscoe v. Bank of Kentucky*, 11 Peters, 324; *Dayton v. Bank of Alabama*, 13 How. 12; *Curran v. Arkansas*, 15 How. 309.) So, a suit may be maintained against a corporation, although a State be a member thereof (*Bank of United States v. Planters' Bank*, 9 Wheat. 904; *Louisville etc. R. R. Co. v. Letson*, 2 How. 497), or even if it be a corporation sole. (*Bank of Kentucky v. Wister*, 2 Peters, 318; 3 Peters, 431.) Where a State brought a suit in her own court, which suit

was removed to a Federal court and a cross bill was filed by one of the defendants, the suit could not be dismissed on the ground that a suit will not lie against a State. (*Port Royal & A. Ry. Co. v. State of South Carolina*, 60 Fed. Rep. 552.) A mere suggestion of title in the State to property in the possession of an individual will not prevent a Federal court from looking into the validity of the title; and if the court decides that the State has no title, the State cannot resist legal process in the case. (*U. S. v. Peters*, 5 Cranch, 115; *Osborn v. Bank of United States*, 9 Wheat. 738.) The courts of the United States have not even a concurrent jurisdiction with State courts, in suits commenced or prosecuted against a State by citizens of another State or of a foreign State; there is nothing in the Constitution to deprive a State court of jurisdiction over suits which it possessed before the Constitution was adopted. (*Garr v. Bright*, 1 Barb. Ch. 157.) The courts of a State may, so far as the Constitution and laws of the United States are concerned, take cognizance of a suit brought by a State in its own courts against citizens of other States, subject to the right of removal. (*Plaquemmes Tropical Fruit Co. v. Henderson*, 170 U. S. 511.) The grant of judicial power was not intended to confer jurisdiction of a suit by one State, which could not be entertained by the judiciary of another State. (*Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265.) All courts of the United States are creatures of the Constitution and laws of the United States, and have only such jurisdictional powers as are conferred by the Constitution and laws of the United States. (*Ex parte Farley*, 40 Fed. Rep. 66.) They are bound to take notice of the Constitution. (*Marbury v. Madison*, 1 Cranch, 137.)

See ante, § 2, note.

§ 4. **Personal security.**—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U. S. Const. Amend. art. 4.)

Search, seizure, and warrants.—This amendment was adopted with intent to restrict and limit the power of the United States (*Luther v. Borden*, 7 How. 66; *Smith v. Maryland*, 18 How. 71), and place the powers under strong prohibitions and checks. (*Green v. Biddle*, 8 Wheat. 88; *Luther v. Borden*, 7 How. 66; *Payne v. Baldwin*, 3 Smedes & M. 673.) The security of personal liberty was such as wisdom and experience demonstrated to be necessary (*Ex parte Milligan*, 4 Wall. 120.) The amendment only protects those who are parties to the Constitution (*Commonwealth v. Griffith*, 19 Mass. 11), and applies to criminal cases only. (*Ex parte Meador*, 1 Abb. U. S. 317; *Fed. Cas. No. 9375*; *Murray v. Hoboken etc. Co.*, 18 How. 272.) So provisions for searches and seizures to aid in the collection of revenue are not repugnant to this clause. (*Ex parte Meador*, 1 Abb. U. S. 317; *Fed. Cas. No. 9375*; *Stanwood v. Green*, 2 Abb. U. S. 184; *Fed. Cas. No. 13301*; *Matt. of Platt*, 7 Ben. 261; *Fed. Cas. No. 11212*; 19 Int. Rev. Rec. 132; *U. S. v. Distillery*, 6 Biss. 483; *Fed. Cas. No. 14966*; *Ex parte Strouse*, 1 Sawy. 605; *Fed. Cas. No. 13548*.) It does not prohibit a search or seizure made in attempting to execute a military order (*Allen v. Colby*, 47 N. H. 544); but an order of the war department directing an arrest without warrant is void. (*Ex parte Field*, 5 Blatchf. 63; *Fed. Cas. No. 4761*.) A warrant of commitment which does not state some good cause

certain, supported by an oath, is illegal (*Ex parte Burford*, 3 Cranch 448; *Anonymous*, 2 Op. Att.-Gen. 266); but an executive officer can justify his acts by showing a regular warrant without showing that it was founded on a complaint under oath. It is only necessary that the order or precept shall be lawful on the face of it. (*Sanford v. Nichols*, 13 Mass. 286.) A warrant directing a search in the house of A. & Co. will not justify a search in the house of A. (*Sanford v. Nichols*, 13 Mass. 286.) A specification of the character, quality, number, weight or other circumstances to distinguish the goods, is necessary. (*Sanford v. Nichols*, 13 Mass. 286.) "And no warrants shall issue but upon probable cause" refers only to process issued under the authority of the United States. (*Smith v. Maryland*, 18 How. 71.) It has no application to proceedings for the recovery of debts.) *Ex parte Burford*, 3 Cranch, 448; *Murray v. Hoboken L. & I. Co.*, 18 How. 272; *Ex parte Milligan*, 4 Wall. 119; *Wakely v. Hart*, 6 Binn. 316; *Bell v. Clapp*, 10 Johns. 263; *Sailley v. Smith*, 11 Johns. 500.) Wisdom and experience demonstrate the necessity of this section, which secures to the people protection against unreasonable seizures and searches. (*Ex parte Milligan*, 4 Wall. 120.) The constitutional right of security against unreasonable searches and seizures is not violated by regulation of a pawnbroker's business. (*Sherman v. Fort Wayne*, 11 L. R. A. 378.) The clause which prohibits the issue of a warrant, except on probable cause supported by oath, applies only to the issue of warrants under the laws of the United States, and has no application to State process. (*Smith v. Maryland*, 18 How. 71.) Where a person was arrested for horse stealing, and detained in prison seven days by neglect on his part to offer security for his appearance, such imprisonment was not unlawful, although no warrant was issued against

him. (*Wheeler v. Nesbitt*, 24 How. 544.) The provision that no warrant shall issue but upon probable cause has no application to proceedings for the recovery of debts. (*Ex parte Burford*, 3 Cranch, 448; *Murray v. Hoboken L. & I. Co.*, 18 How. 272; *Ex parte Milligan*, 71 U. S. 119; *Wakely v. Hart*, 6 Binn. 316; *Bell v. Clapp*, 10 Johns. 263; *Sailly v. Smith*, 11 Johns. 500.)

§ 5. **Personal rights.**—No person shall be held to answer for capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (U. S. Const. Amend. art. 5.)

Persons accused of crime.—The prohibitions in this article are exclusively restrictions upon the Federal powers to prevent interference with the rights of States and their citizens. (*Barron v. Baltimore*, 7 Peters, 243; *Livingston v. Moore*, 7 Peters, 469; *Fox v. Ohio*, 5 How. 410; *Withers v. Buckley*, 20 How. 84; *Clark v. Dick*, 1 Dill. 8; *Fed. Cas. No. 2818*; *Bonaparte v. Camden & A. R. R. Co.*, *Bald.* 220; *Fed. Cas. No. 1617*; *Murphy v. People*, 2 Cowen, 815; *Barker v. People*, 3 Cowen, 686; *Boring v. Williams*, 17 Ala. 516; *Jackson v. Wood*, 2 Cowen, 819; *Railroad Co. v. Davis*, 2 Dev. & B. 451; *James v. Commonwealth*, 12 Serg. & R. 220; *Hollister v. Union Co.*, 9 Conn. 436;

Powers v. Dougherty, 23 Ga. 65; Boyd v. Ellis, 11 Iowa, 97; State v. Jackson, 21 La. Ann. 574; Weimer v. Banbury, 30 Mich. 201; Concord R. R. v. Greely, 17 N. H. 47; Prescott v. State, 19 Ohio St. 184; State v. Shumpert, 1 Rich. N. S. 85; Griffing v. Gibb, McAll. 220; Fed. Cas. No. 5819; Twitchell v. Comm., 7 Wall. 321; State v. Wells, 46 Iowa, 662.) The words "infamous crime" are descriptive of an offense that subjects the person to infamous punishment, or prevents his being a witness. (U. S. v. Sheppard, 1 Abb. U. S. 431; Fed. Cas. No. 16273; U. S. v. Block, 4 Sawy. 211; Fed. Cas. No. 14609; U. S. v. Maxwell, 3 Dill. 275; Fed. Cas. No. 15750; U. S. v. Waller, 1 Sawy. 701; Fed. Cas. No. 16634.) Misdemeanors cannot be brought within the term "infamous." (U. S. v. Ebert, 1 Cent. L. J. 205; Fed. Cas. No. 15019.) As respects offenses not capital and not infamous, there is no restriction upon Congress as to the mode of procedure. (U. S. v. Maxwell, 3 Dill. 275; Fed. Cas. No. 15750.) An indictment must be found by a grand jury; an information may be preferred by an officer of the court. (Clepper v. State, 4 Tex. 244.) A grand jury is a body of men varying from twelve to twenty-three, who, in secret, hear the evidence offered by the government only, and find or ignore bills of indictment. (People v. King, 2 Caines' Rep. 98; Commonwealth v. Wood, 2 Cush. 149.) This clause relates to time of war as well as peace. (In re Kemp, 16 Wis. 359.) "When in actual service in time of war or public danger" refers to the militia (In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596); it cannot be extended in time of war on a plea of public danger. (Ex parte Milligan, 4 Wall. 123.) Cases arising in the land and naval forces, etc., are excepted from presentment and indictment and right of trial by jury. (Ex parte Milligan, 4 Wall. 123; In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596.) An offense

committed by a party while actually in the naval service is a "case arising in the naval forces." (In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596.) And a paymaster's clerk on duty in the navy is a person "in the naval forces." (In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596.) The power to punish military and naval officers is distinct from the power to define judicial powers (*Dynes v. Hoover*, 20 How. 78; In re Bogart, 2 Sawy. 401; Fed. Cas. No. 1596), and the power of Congress to provide for the government of the land and naval forces is not affected or limited by this article (In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596); but a military commission for the trial of persons not in the military service is unconstitutional. (*Milligan v. Hovey*, 3 Biss. 13; Fed. Cas. No. 9605; In re Bogart, 2 Sawy. 402; Fed. Cas. No. 1596; *Ex parte Field*, 5 Blatchf. 79; Fed. Cas. No. 4761.) A court-martial is a lawful tribunal under the Constitution (In re Bogart, 2 Sawy. 406; Fed. Cas. No. 1596); but if it had no jurisdiction, or should inflict punishment forbidden by law, the civil courts could inquire into the jurisdiction and give redress. (*Marshall's Case*, 10 Cranch, 76; *Dynes v. Hoover*, 20 How. 82.) This article creates no new principles, but is simply declarative of great fundamental principles. (*Young v. McKenzie*, 3 Ga. 31; *Campbell v. State*, 11 Ga. 353.) A person sentenced to imprisonment for an infamous crime, without having been presented or indicted by a grand jury, is entitled to be discharged on habeas corpus. (*Ex parte Wilson*, 114 U. S. 417.) Both the Fourth and Fifth Constitutional Amendments relate to the personal security of the citizen. They nearly run into, and mutually throw light upon, each other. (*Boyd v. U. S.*, 116 U. S. 616.)

Does not apply to State statutes.—This amendment of the U. S. Const. has no application to a State stat-

ute prescribing punishment for crime, as it is a limitation upon the powers of the Federal government only. (*In re Boggs* (Ky.), 45 Fed. Rep. 475.) The prohibitions contained in the first twelve constitutional amendments were not designed as limits upon the State governments in reference to their own citizens, but as exclusively upon Federal power. (*Barron v. Baltimore*, 7 Peters, 243; *Fox v. Ohio*, 5 How. 410; *Mechanics & T. Bank v. Thomas*, 18 How. 384; *Twitchell v. Pennsylvania*, 7 Wall. 321; *Presser v. Illinois*, 116 U. S. 252.) But a State must recognize as binding an amendment to the Constitution of the United States, and enforce it within its own limits, without reference to any inconsistent provisions in its own Constitution or statutes. (*Neal v. Delaware*, 103 U. S. 370.)

Jeopardy.—A prisoner is not once put in jeopardy until the verdict of the jury is rendered for or against him (*U. S. v. Perez*, 9 Wheat. 579; *U. S. v. Haskell*, 4 Wash. C. C. 402; *Fed. Cas. No. 15321*; *People v. Goodwin*, 18 Johns. 187; *Hoffman v. State*, 20 Md. 425; *State v. Moore*, Walk. 134; *Commonwealth v. Merrill*, Thach. C. C. 1), and twice in jeopardy does not relate to a mistrial (*U. S. v. Haskell*, 4 Wash. C. C. 410; *Fed. Cas. No. 15321*), nor when the jury is discharged from necessity, or the ends of justice would be defeated (*U. S. v. Perez*, 9 Wheat. 579; *U. S. v. Gibert*, 2 Sum. 19; *Fed. Cas. No. 15204*; *Commonwealth v. Cook*, 6 Serg. & R. 577; *U. S. v. Wilson*, Bald. 95; *Fed. Cas. No. 16730*; *U. S. v. Keen*, 1 McLean, 434; *Fed. Cas. No. 15510*), as where one of the jury becomes insane (*U. S. v. Haskell*, 4 Wash. C. C. 402; *Fed. Cas. No. 15321*), or is attacked with a sudden illness (*Commonwealth v. Merrill*, Thach. C. C. 1), or if a juror is so biased that he is unfit to sit on the case (*U. S. v. Morris*, 1 Curt. 23; *Fed. Cas. No. 15815*), or where the jury fail to agree (*U. S.*

v. Perez, 9 Wheat, 579; People v. Goodwin, 18 Johns. 187), or where they do not agree on the last day of the term. (State v. Moor, Walk. 134.) Jeopardy attaches where the verdict of guilty is rendered, and judgment is arrested for want of arraignment and plea. (State v. Parrish, 43 Wis. 395; and see State v. Norvell, 2 Yerg. 24.) The court may, in its discretion, discharge the jury in a capital case, as well as in a case of misdemeanor. (U. S. v. Haskell, 4 Wash. C. C. 402; Fed. Cas. No. 15321.) Where the jury is impaneled and sworn by inadvertence before an argument, the proceeding may be disregarded, and a jury impaneled in regular order. (U. S. v. Riley, 5 Blatchf. 204; Fed. Cas. No. 16164.) Where the jury was discharged on account of the absence of witnesses, it does not prevent a subsequent trial. (Hoffman v. State, 20 Md. 425; and see U. S. v. Watson, 3 Ben. 1; Fed. Cas. No. 16651.) Where the indictment on demurrer is held bad, the prisoner may be remanded for further proceedings. (U. S. v. Townmaker, Hemp. 299; Fed. Cas. No. 16533 a.) The provision is intended to shield the prisoner from a second trial, except at his election and request, which is manifested by his application for a new trial. (U. S. v. Williams, 1 Cliff. 5; Fed. Cas. No. 16707; U. S. v. Keen, 1 McLean, 434; Fed. Cas. No. 15510; U. S. v. Connor, 3 McLean, 573; Fed. Cas. No. 14847; U. S. v. McComb, 5 McLean, 286; Fed. Cas. No. 15702; U. S. v. Harding, 1 Wall. Jr. 127; Fed. Cas. No. 15301.) If the district attorney enters a nolle prosequi after the jury is impaneled and sworn, the accused cannot be again indicted for the same offense (U. S. v. Shoemaker, 2 McLean, 114; Fed. Cas. No. 16279), if the court had jurisdiction. (Thompson v. State, 6 Neb. 107; Commonwealth v. Peters, 53 Mass. 387; State v. Odell, 4 Blackf. 156.) Where either a fine or imprisonment can be imposed, the court cannot,

after payment of the fine, render a new judgment of imprisonment. (Ex parte Lange, 18 Wall. 170; but see *Brown v. Swineford*, 44 Wis. 282.) Where defendant was once tried on an information and a verdict was returned finding him guilty of a lesser offense, he cannot again be tried on the same information for the higher offense. (In re Bennett, 84 Fed. Rep. 324.) This constitutional right may be waived. (*Veatch v. State*, 60 Ind. 291.)

Witness.—The provision as to a party not being a witness against himself applies only to criminal cases. (Ex parte Meador, 1 Abb. U. S. 317; Fed. Cas. No. 9375; Ex parte Strause, 1 Sawy. 605; Fed. Cas. No. 13548; In re Phillips, 10 Int. Rev. Rec. 107; Fed. Cas. No. 11097.) Forcing a man to be a witness against himself is contrary to the principles of a republican government. (*Wyneham v. People*, 13 N. Y. 392.) The words "criminal case" mean a case involving punishment for crime in an ordinary criminal proceeding (U. S. v. Distillery, 6 Biss. 483; Fed. Cas. No. 14966; U. S. v. Parker, 6 Biss. 379; Fed. Cas. No. 16515), or on a charge of misconduct against a public officer. (U. S. v. Collins, 1 Woods, 499; Fed. Cas. No. 14837.) The provision is not intended to shield a witness from the infamy or disgrace resulting from incriminating testimony, but only from actual prosecution and punishment. (*Brown v. Walker*, 70 Fed. Rep. 46.)

Life, liberty, or property.—This amendment simply declares the great common-law principle as to personal rights, applicable to both State and Federal governments. (*Young v. McKenzie*, 3 Ga. 42; *Parham v. Justice*, 9 Ga. 341; *Ervine's Appeal*, 16 Pa. St. 256.) The right to life includes the right to the body in its completeness and without dismemberment; to liberty—the right to exercise the faculties

and follow lawful avocations; to property—the right to acquire, possess, and enjoy it in any way consistent with the equal rights of others, and the just demands of the State. (*Bertholf v. O'Reilly*, 18 Am. Law Reg. N. S. 115.) No person can be deprived of his liberty on the ground of neglect to assert his rights. (*Allen v. Sarah*, 2 Har. 434.) This section prohibits an act authorizing the arrest of a citizen without just cause (*Griffin v. Wilcox*, 21 Ind. 370); yet a rebel in battle may be slain or captured, and thus deprived of his liberty (*Norris v. Doniphan*, 4 Met. (Ky.) 385); but a statute which makes an order of the President a sufficient defense for an act personally done is void. (*Johnson v. Jones*, 44 Ill. 142.) A law which authorizes commitment, as an inebriate to a lunatic asylum, on an ex parte affidavit, violates this provision. (*In re Janes*, 30 How. Pr. 446.) This section was intended as a constitutional safeguard in the trial of those cases for which it was stipulated the courts shall remain open, and those wherein a party shall have his remedy by due course of law. (*Bonaparte v. Camden etc. R. R. Co.*, Bald. 220; Fed. Cas. No. 1617; *Mason v. Kennebec etc. R. R. Co.*, 31 Me. 215.) Legislative authority cannot reach life, liberty, or property, except for crime, or when a sacrifice is demanded by a just regard for the public welfare. (*Atchison etc. R. R. Co. v. Baty*, 6 Neb. 37; *Taylor v. Porter*, 4 Hill, 140; *Wilkinson v. Leland*, 2 Peters, 658.) The right to acquire, hold, and enjoy property is guaranteed by the fundamental law. (*Commonwealth v. Bacon*, 13 Bush, 214.) All property is held under the implied liability that its use shall not be injurious to others. (*Commonwealth v. Alger*, 7 Cush. 84; *Bertholf v. O'Reilly*, 18 Am. Law Reg. N. S. 120; *Comm. v. Bacon*, 13 Bush. 214.) A party is protected in the enjoyment of all property, whether real or personal (*Ervine's Appeal*, 16 Pa. St. 256), includ-

ing the right to the use of a patented machine. (*Bloomer v. McQuewan*, 14 How. 539.) The legislature has no power to take property from one individual and give it to another. (*Turner v. Althaus*, 6 Neb. 54.) It is intended that courts shall enforce this provision even against persons assuming to act under the authority of the government. (*United States v. Lee*, 106 U. S. 196.)

Due process of law means such an exertion of the powers of government as the settled maxims of the law permit and sanction. (*Bertholf v. O'Reilly*, 18 Am. L. Reg. N. S. 119; *Ex parte Ah Fook*, 49 Cal. 402.) It simply requires that a person should be brought into court and have an opportunity to prove any fact for his protection. (*People v. Essex Co.*, 70 N. Y. 229.) It means law in its regular course of administration through courts of justice (*Barker v. Kelly*, 11 Minn. 480; *Rowan v. State*, 30 Wis. 129; *State v. Becht*, 23 Minn. 413), a timely and regular proceeding to judgment and execution. (*Dwight v. Williams*, 4 McLean, 586; *Fed. Cas. No. 4218*.) It generally implies and includes parties, judge, regular allegations, and a trial according to some settled course of judicial proceedings (*Murray v. Hoboken etc. Co.*, 18 How. 272; *Huber v. Reilly*, 53 Pa. St. 112; *Reese v. City of Watertown*, 19 Wall. 122; *Westervelt v. Greg*, 12 N. Y. 202); a legal proceeding under direction of a court (*Newcomb v. Smith*, 1 Chand. 71); intending to secure the right of trial according to the forms of law (*Parsons v. Russell*, 11 Mich. 113); the law of the land (*Matt v. Meador*, 1 Abb. U. S. 331; *Fed. Cas. No. 9375*; *Murray v. Hoboken etc. Co.*, 18 How. 272; *Janes v. Reynolds*, 2 Tex. 251); a present existing rule and not an *ex post facto* law (*Hoke v. Henderson*, 4 Dev. 15; *Taylor v. Porter*, 4 Hill, 147; *Wynehamer v. People*, 13 N. Y. 378; *Norman v. Heist*, 5 Watts & S. 171; *Murray v.*

Hoboken etc. Co., 18 How. 272); a law existing at the time of the vesting of rights (*Wilkinson v. Leland*, 2 Peters, 628; *Osborn v. Nicholson*, 13 Wall. 662; *Taylor v. Porter*, 4 Hill, 146.) That it means a trial according to some settled course of procedure is not universally true. (*Green v. Briggs*, 1 Curt. 311; Fed. Cas. No. 5764; *Murray v. Hoboken etc. Co.*, 18 How. 272; *Hoke v. Henderson*, 4 Dev. 15; *Taylor v. Porter*, 4 Hill, 146; *Van Zandt v. Waddel*, 2 Yerg. 260; *State Bank v. Cooper*, 2 Yerg. 599; *Jones v. Perry*, 10 Yerg. 59.) It does not necessarily import a jury trial (*Ex parte Meador*, 1 Abb. U. S. 317; Fed. Cas. No. 9375), but includes summary remedies. (*Martin v. Mott*, 12 Wheat. 19; *United States v. Ferreira*, 13 How. 40; *Ex parte Meador*, 1 Abb. U. S. 317; Fed. Cas. No. 9375; *Murray v. Hoboken etc. Co.*, 18 How. 272.) Civil proceedings for contempt are not included. (*State v. Becht*, 23 Minn. 411.) A statute making the property owner liable for damages resulting from the illegal use of property by a tenant is valid. (*Bertholf v. O'Reilly*, 18 Am. Law Reg. N. S. 124; *Dobbins v. United States*, 96 U. S. 395.) An assessment for grading and improving streets is not a taking of property without compensation, or without due process of law. (*Griffin v. Mayor*, 4 N. Y. 419.) Private property may be taken by a commander in war in case of exigency, but the case must be urgent. (*Mitchell v. Harmony*, 13 How. 115; and see *Ex parte Milligan*, 4 Wall. 2; *Clarke v. Mitchell*, 64 Mo. 564.) Provisions for searches and seizures to aid in the collection of the revenue are not repugnant to this amendment. (*Matter of Platt*, 7 Ben. 261; Fed. Cas. No. 11212; 19 Int. Rev. Rec. 132; *Murray v. Hoboken etc. Co.*, 18 How. 277; *Ames v. Port Huron etc. Co.*, 11 Mich. 139.) So processes for seizure and assessment are within the discretion of the legislature (*Pullan v. Kinsinger*, 2 Abb. U. S. 94; Fed. Cas. No. 11463; *Davidson v. New*

Orleans, 96 U. S. 97), but congress has no power to provide for the absolute forfeiture of land as a penalty for the nonpayment of taxes without any process. (*Martin v. Snowdin*, 18 Gratt. 100.) A confiscation act does not authorize seizure and confiscation without due process of law. (*Hodgson v. Milward*, 3 Grant. 406.) Congress has no power to organize a board of revision to nullify confirmed titles. (*Reichart v. Felps*, 6 Wall. 160.) A trial before a board of election officers is not due process of law. (*Huber v. Rielly*, 53 Pa. St. 112.) By "without due process of law" is meant all the guarantees set forth in the sixth amendment. (*Janes v. Reynolds*, 2 Tex. 251; *Jones v. Montes*, 15 Tex. 353.) A statute which provides for a trial and notice thereof, and for giving a hearing, for deliberations and judgment, and for an appeal, is not in violation of the United States Constitution. (*Pearson v. Yewdall*, 95 U. S. 294.) Proceedings, whether *ex parte* or *adversary*, which result in depriving a person of his private property, are not wanting in "due process of law," if such person has consented thereto in advance of the proceedings. (*Murdock v. Cincinnati (Ohio)*, 39 Fed. Rep. 891.) A principal may be arrested by his bail in another state than that where the bond is given, and be transferred to such state without his right to due process being infringed. (*In re Von der Ahe*, 85 Fed. Rep. 959.) The disposing by an appellate court of a writ of error in a criminal case, in the absence of the accused, is in conformity to due process of law. (*Fielden v. State of Illinois*, 143 U. S. 452; *Schwab v. Berggren*, 143 U. S. 442.)

Eminent domain.—The power of the government respecting public improvements is a sovereign power, resting in the discretion of congress. (*Avery v. Fox*, 1 Abb. U. S. 246; Fed. Cas. No. 674; *Swan v. Will-*

iams, 2 Mich. 427.) Under the police power, persons and property are subject to all kinds of restrictions and burdens to secure general comfort, health, and prosperity. (Thorpe v. Rutland & R. R. B. Co., 27 Vt. 140; Slaughter House Cases, 16 Wall. 36; Munn v. Illinois, 94 U. S. 123; Bertholf v. O'Reilly, 18 Am. Law. Reg. 121.) This power of eminent domain is not impaired by the constitution. (Dyer v. Tuscaloosa Br. Co., 2 Port. 296; West Riv. Br. Co. v. Dix, 6 How. 539.) The terms in the constitution are declaratory and not restrictive. (Young v. McKenzie, 3 Ga. 31.) Where there is an apparent public interest to be subserved, the legislature, or person or body it may designate, is the proper judge of the necessity. (Newcomb v. Smith, 1 Chand. 71.) The manner in which the power of eminent domain is exercised, is a matter of legislative discretion. (Chappell v. United States, 42 U. S. App. 539; 81 Fed. Rep. 764.) Governments more frequently effect these objects through the aid of corporations than by their immediate agents. (Ches. & O. Com. Co. v. Key, 3 Cranch C. C. 599; Fed. Cas. No. 2649; Balt. & O. R. R. Co. v. Van Ness, 4 Cranch C. C. 595; Fed. Cas. No. 830; Swan v. Williams, 2 Mich. 427.) Private property embraces all private property (Murray v. Hoboken etc. Co., 18 How. 272; United States v. Harding, 1 Wall. Jr. 127; Fed. Cas. No. 15301), including franchises. (West Riv. Br. Co. v. Dix, 6 How. 507; Wilkinson v. Leland, 2 Peters, 658; Charles Riv. Br. v. Warren Br., 11 Peters, 645; Bonaparte v. Camden etc. R. R. Co., Bald. 205; Fed. Cas. No. 1617; Enfield Br. Co. v. Hartford etc. R. R. Co., 17 Conn. 40; Lexington & O. R. R. Co. v. Applegate, 8 Dana, 289; Tuckahoe Co. v. Railroad Co., 11 Leigh, 42; Piscataqua etc. Br. v. N. H. Br., 7 N. H. 35; Barber v. Andover, 8 N. H. 398; Pierce v. Somersworth, 10 N. H. 370; Backus v. Lebanon, 11 N. H. 20; Varick v.

Smith, 5 Paige, 146; Dyer v. Tuscaloosa Br. Co., 2 Port. 296; Boston W. P. Co. v. Boston etc. R. R. Corp. 23 Pick. 360; L. etc. R. R. Co. v. Chappell, 1 Rice, 383; Armington v. Barnet, 15 Vt. 745; West Riv. Br. Co. v. Dix, 16 Vt. 446; Bloodgood v. M. etc. R. R. Co., 18 Wend. 14.) Any injury to the property is a taking within the meaning of this provision (Pumpelly v. Green Bay Co., 13 Wall. 180; Pratt v. Brown, 3 Wis. 613; Walker v. Shepardson, 4 Wis. 511; Goodall v. Milwaukee, 5 Wis. 39; Weeks v. Milwaukee, 10 Wis. 242; Fisher v. Horicon Iron Co., 10 Wis. 353; Newell v. Smith, 15 Wis. 104; but see Alexander v. Milwaukee, 16 Wis. 248), as an interruption to the use of property. (Pumpelly v. Green Bay Co., 13 Wall. 166; Munn v. Illinois, 94 U. S. 144.) Where the law strips property of its attribute the owner is within this provision. (Wynehamer v. People, 13 N. Y. 378.) This provision refers only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power. (Legal Tender Cases, 12 Wall. 457.) The power to take private property is limited to purposes for public uses. (United States v. Chicago, 7 How. 195; United States v. Ames, 1 Wood. & M. 76; Fed. Cas. No. 14441.) It is not a limitation on the taxing power, but on the power of eminent domain. (Gilman v. Sheboygan, 2 Black, 510.) Public use means a use concerning the whole community as distinguished from particular individuals. (Gilmer v. Lime Point, 18 Cal. 229; Heyneman v. Blake, 19 Cal. 579; see People v. Kerr, 37 Barb. 357.) The legislature cannot take private property for purely private uses (Consol. Chan. Co., v. Cent. Pac. R. R. Co., 51 Cal. 269; Newcomb v. Smith, 1 Chand. 71; but see **Ex parte** Barnard, 4 Cranch C. C. 294; Fed. Cas. No. 16607; so a tax law in aid of a private enterprise and business is void. (Pumpelly v. Green Bay Co., 13 Wall. 177; Bertholf v. O'Reilly, 18 Am. Law. Reg.

N. S. 116; *Wynehamer v. People*, 13 N. Y. 378; *Weis-mer v. Village of Douglass*, 64 N. Y. 92.) A railroad company cannot condemn a site for the erection of manufactories of railroad cars (*Eldridge v. Smith*, 34 Vt. 484); but a statute authorizing the taking of private property for mill-sites and dams is valid. (*Newcomb v. Smith*, 1 Chand. 71.) Extraordinary and unforeseen occasions arise in cases of impending danger when private property may be appropriated to the public use, but the emergency must be extreme and imperative. (*United States v. Russell*, 13 Wall. 623; *Taylor v. Railroad Co.*, 6 Cold. 646); as in case of military necessity (*Clark v. Mitchell*, 64 Mo. 564); or in case of a conflagration (*Bishop v. City of Macon*, 7 Ga. 200.) If movable property is taken in good faith by a military commander, the title vests in government, although it was subsequently discovered not to have been actually necessary (*Taylor v. R. R. Co.*, 6 Cold. 646; *Wellman v. Wickerman*, 44 Mo. 484); the courts cannot interfere with such acts. (*Newcomb v. Smith*, 1 Chand. 71.) Every attempt of a public officer to take private property for public use, unless justified by some pressing necessity, is a simple trespass, for which the government is not responsible. (*Pitcher v. United States*, 1 Nott. & H. (Ct. of Cl.) 7.) The power to appropriate land or other property within the State for its own uses belongs exclusively to the federal government, and can in no wise be affected by the State legislature. (*Kohl v. United States*, 91 U. S. 367; *Trombley v. Humphrey*, 23 Mich. 471; *Darlington v. United States*, 33 Leg. Int. 409; but see *Gilmer v. Lime Point*, 18 Cal. 229; *Burt v. Merchants' Ins. Co.*, 106 Mass. 356.) Courts may determine a use is a public use, but not the extent to which property may be taken. (*St. Louis Co. Court v. Griswold*, 58 Mo. 175.)

Compensation on condemnation.—The constitution does not recognize any necessity as authority for taking property for public use without compensation (*Norris v. Doniphan*, 4 Met. (Ky.) 385; *Corbin v. Marsh*, 2 Duval, 193), even on the rightful taking of property for public use or destruction by a military officer (*Grant v. United States*, 1 Ct. of Cl. 41; 2 Ct. of Cl. 551; *Wiggins v. United States*, 3 Ct. of Cl. 412), but the power to confiscate the property of public enemies is not affected by the restriction of this amendment. (*Miller v. United States*, 11 Wall. 263.) Private property cannot be taken for public use without just compensation. (*Barron v. Baltimore*, 7 Peters, 253; *Buckner v. Street*, 1 Dill. 248; Fed. Cas. No. 2098; *Case of De Groot*, 9 Op. Att. Gen. 481; *Young v. McKenzie*, 3 Ga. 31; *Danville etc. R. R. Co. v. Comm.*, 73 Pa. St. 29.) There must be a condemnation or an agreement consummated. (*Whitman v. Boston etc. R. R. Co.*, 85 Mass. 138.) The actual occupant of vacant land is entitled to damages, even where it is taken under an act of Congress. (*California etc. R. R. Co. v. Gould*, 21 Cal. 254.) So the rights of owners to adjacent streets is as much property as the lots they own. (*Lackland v. North Mo. R. R. Co.*, 31 Mo. 180.) Congress cannot authorize a telegraph company to construct its lines over private property without just compensation. (*Atlantic & Pac. Tel. Co. v. Chicago etc. R. R. Co.*, 6 Biss. 158; Fed. Cas. No. 632.) In the exercise of its power over post offices and post roads, Congress cannot take property without the consent of the owner or a just compensation (*Dickey v. Turnp. Co.*, 7 Dana, 119); nor, in improving navigation, can it divert waters from their natural channel without compensation to riparian owners. (*Avery v. Fox*, 1 Abb. U. S. 246; Fed. Cas. No. 674.) The making of compensation must be as absolutely certain as that the property

is taken. (Young v. Harrison, 6 Ga. 130; Carr v. Georgia etc. R. R. Co., 1 Kelly, 524; Miller v. Craig, 11 N. J. Eq. 175; Buffalo etc. R. R. Co. v. Ferris, 26 Tex. 588; Bloodgood v. Mohawk etc. R. R. Co., 18 Wend. 9.) Just compensation means just in regard to the public as well as to the individual (Chesapeake & O. Can. Co. v. Key, 3 Cranch C. C. 599; Fed. Cas. No. 2649)—the means of ascertaining which is to be in the discretion of Congress. (Chesapeake & O. Can. Co. v. Key, 3 Cranch C. C. 599; Fed. Cas. No. 2649; Swan v. Williams, 2 Mich. 427; Munn v. Illinois, 94 U. S. 113; 69 Ill. 80.) If the congressional act provides a special tribunal, no other can be resorted to. (Meade v. United States, 2 Ct. of Cl. 224.) The advantage to land not taken cannot be set off against its intrinsic value. (People v. Mayor of Brooklyn, 6 Barb. 209; Jacob v. Louisville, 9 Dana, 114; Rogers v. Railroad Co., 35 Me. 319; Moale v. Baltimore, 5 Md. 314; Buffalo etc. R. R. Co. v. Ferris, 26 Tex. 588; Hatch v. Vermont Cent. R. R. Co., 25 Vt. 49; State v. Miller, 3 Zab. 383.)

Compelling one to testify against himself.—A proceeding to forfeit a person's goods for an offense against the laws, though civil in form, and whether in rem or in personam, is a "criminal case" within the protection of this amendment. (Boyd v. United States, 116 U. S. 616.) The seizure or compulsory production of a man's private papers, to be used in such a case, is equivalent to compelling him to be a witness against himself. (Id.)

§ 6. Place of trial in criminal cases.—The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial

shall be at such place or places as the Congress may by law have directed. (U. S. Const. art. 3, sec. 2, cl. 3. See Rev. Stats. sec. 729.)

Trial for crimes.—This applies to proceedings in federal courts (*Murphy v. People*, 2 Cowen, 815; *Anderson v. Dunn*, 6 Wheat. 215; see Amend. arts. iv, v, vi), and is not suspended by the intervention of war. (*Ex parte Milligan*, 4 Wall. 123.) A citizen in civil life in nowise connected with military service cannot be tried by a military commission where courts are open to hear criminal accusations and redress grievances. (*Ex parte Milligan*, 4 Wall. 123.) As soon as it judicially appears of record that the party has pleaded not guilty, an issue has arisen which courts are bound to direct to be tried by a jury. (*United States v. Gilbert*, 2 Sum. 19; Fed. Cas. No. 15204.) The trial is the examination before a competent tribunal, according to the law of the land. (*United States v. Curtis*, 4 Mason, 232; Fed. Cas. No. 14905.) Congress must first make an act a crime, affix the penalty, and declare the court having jurisdiction (*United States v. Hudson*, 7 Cranch, 32; *United States v. Coolidge*, 1 Wheat. 415); and any law dispensing with the requisites to constitute a jury is unconstitutional. (*Work v. State*, 2 Ohio St. 296; *State v. Cox*, 8 Ark. 436.) A crime committed against the laws of the United States out of the limits of a State is not local, but may be tried at such place as Congress shall designate by law. (*United States v. Dawson*, 15 How. 467; and see *Anderson v. Dunn*, 6 Wheat. 215.) A statute which provides that a party may be tried by the court on a charge of libel is void, although it gives him a right of appeal to a court where trial may be had by jury. (*Ex parte Dana*, 7 Ben. 1; Fed. Cas. No. 3554.) A statute to confiscate the property of a person engaged in rebellion, in any district in

which property may be found, is void. (*Norris v. Doniphan*, 4 Met. (Ky.) 385.) A proceeding to annul the license of a pilot for neglect of duty is not a criminal proceeding. (*Low v. Commissioners*, Charl. R. M. 302.) This provision applies only to the federal courts. (*Re Smith*, 10 Wend. 457.) The right of trial by jury is preserved to every one accused of crime who is not attached to the army or navy, or militia in actual service. (*Ex parte Milligan*, 4 Wall. 2.)

§ 7. Jury trial in criminal cases.—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (U. S. Const. Am. art. 6.)

These prohibitions are exclusively restrictive on the federal powers, to prevent interference with the rights of States and their citizens (*Baron v. Baltimore*, 7 Peters, 243; *Fox v. Ohio*, 5 How. 410); it does not apply to acts of the legislatures of the several States (*Twitchell v. Commonwealth*, 7 Wall. 321; *Murphy v. People*, 2 Cowen, 815; *Jackson v. Wood*, 2 Cowen, 819; *Campbell v. State*, 11 Ga. 353; *Guillote v. New Orleans*, 12 La. An. 432; *Ex parte Smith*, 10 Wend. 449; *Walker v. Sauvinet*, 92 U. S. 90), though it applies to the case of offenses committed within the limits of the State. (*United States v. Dawson*, 15 How. 467.) This article does not apply to the power

to confiscate the property of public enemies (Miller v. United States, 11 Wall. 268), nor to a proceeding to annul the license of a pilot for neglect of duty. (Low v. Commissioners, Charlt. R. M. 302.) The exception as to trial by military and naval courts, expressed in the fifth amendment, governs this amendment by implication. (Ex parte Milligan, 4 Wall. 123; In re Bogart, 2 Sawy. 402; Fed. Cas. No. 1596.) The guaranty of the right of trial by jury is intended for a state of war as well as for a state of peace, and is equally binding on rulers and people. (Ex parte Milligan, 4 Wall. 119.) The indictment must set forth the offense with clearness and certainty. (United States v. Cruikshank, 92 U. S. 542; 1 Woods, 308; Fed. Cas. No. 14897.) Where the accused wrongfully kept away the witnesses, he waives his right to be confronted by them (Reynolds v. United States, 8 Otto, 145); so, where he admits that absent witnesses will testify to the facts set forth in the affidavit produced on behalf of the United States. (United States v. Sacramento, 2 Mont. 239.) The jury are not constituted judges of the law in criminal cases. (United States v. Morris, 1 Curt. 23; Fed. Cas. No. 15815; United States v. Shive, Bald. 510; United States v. Battiste, 2 Sum. 243; Fed. Cas. No. 14545; Townsend v. State, 2 Blackf. 151; Pierce v. State, 5 How. 504; Commonwealth v. Porter, 51 Mass. 268; Montee v. Comm., 3 Marsh. J. J. 150.) The provisions of this amendment are satisfied if the accused has been once confronted with and had opportunity to cross-examine the witness. (People v. Penhollow, 42 Hun, 103.) Such provisions do not apply to prosecutions under State laws, or prohibit States proceeding by information. (Boswell v. State, 11 Ind. 47; Re Smith, 10 Wend. 457.) A party has a right to judgment of his peers in only those cases in which it has immemorially existed, or in which it has been expressly given in law. (Adler v. Whitbeck, 44 Ohio St. 539.)

§ 8. **Trial by jury in civil cases.**—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law. (U. S. Const. Am. art. 7.)

Trial by jury.—This provision relates to trials in the United States courts, and not to trials in State courts. (*Livingston v. Moore*, 7 Peters, 469; *Cox v. Ohio*, 5 How. 434; *Justices v. Murray*, 9 Wall. 274; *Edwards v. Elliott*, 21 Wall. 532; *Walker v. Sauvinet*, 92 U. S. 92; *Boring v. Williams*, 17 Ala. 510; *Colt v. Eves*, 12 Conn. 243; *Foster v. Jackson*, 57 Ga. 206; *Railroad Co. v. Heath*, 9 Ind. 558; *State v. Keyes*, 8 Vt. 57; *Huntington v. Bishop*, 5 Vt. 186; *Livingston v. Mayor*, 8 Wend. 85; *Lee v. Tillotson*, 24 Wend. 337.) It does not extend to suits against the government. (*McElrath v. United States*, 12 Ct. of Cl. 312.) The restriction is general and applies to all the departments of government alike. (*Kleinschmidt v. Dunphy*, 1 Mont. 118), the governor as much as any other department (*Claim of Reside*, 9 Op. Att. Gen. 200), and to the legislative and judiciary of the territories (*Webster v. Reid*, 11 How. 437; *Morris*, 487; *Whallon v. Bancroft*, 4 Minn. 109), and to tribunals established under a provisional government. (*Scott v. Billgerry*, 40 Miss. 119.) The phrase "common law" is used in contradistinction to equity, admiralty, and maritime jurisdiction, and embraces all suits at common law, whatever may be their peculiar form, brought to settle legal rights. (*Parsons v. Bedford*, 3 Peters, 483; *Ins. Co. v. Comstock*, 16 Wall. 358; *United States v. La Vengeance*, 3 Dall. 297; *Webster v. Reid*, 11 How. 437; *Baines v. The James & Catherine*, Bald. 544; *Fed. Cas. No. 756*.) The "trial by jury" means a trial by a

tribunal of twelve men acting only upon a unanimous determination: hence, a territorial statute allowing a verdict upon agreement of three-fourths of the jury is void (*Kleinschmidt v. Dunphy*, 1 Mont. 118); but it does not prevent such legislature from extending the right to cases involving less than twenty dollars. (*Whallon v. Bancroft*, 4 Minn. 109.) The benefit of the right herein secured may be waived, but the act of waiver should be plain and explicit. (*Bank v. Okely*, 4 Wheat. 235; *Parsons v. Armor*, 3 Peters, 415; *United States v. Rathbone*, 2 Paine, 578; Fed. Cas. No. 16121.) The inhibition contained in this article refers to suits at common law alone, and not suits in admiralty, although the courts of common law have a concurrent jurisdiction (*Warring v. Clarke*, 5 How. 441; *The Huntress*, 2 Ware (Dav.) 89; Fed. Cas. No. 6914; *United States v. Bright*, N. P. 19; Fed. Cas. No. 14647; *Bains v. The James & Catherine*, Bald. 544; Fed. Cas. No. 756), in which suits in admiralty the trial is never by jury (*United States v. La Vengeance*, 3 Dall. 297; *The Margaret*, 9 Wheat. 421; *The Betsey*, 4 Cranch, 443; *Whelan v. United States*, 7 Cranch, 112; *United States v. The Queen*, 4 Ben. 237; Fed. Cas. No. 16107; *Clark v. United States*, 2 Wash. C. C. 519; Fed. Cas. No. 2837; *United States v. Irma*, 12 Int. Rev. Rec. 42; Fed. Cas. No. 15444), nor does the provision embrace the established exclusive jurisdiction of courts of equity (*Shields v. Thomas*, 18 How. 353; *Woodworth v. Robers*, 3 Wood. & M. 135; Fed. Cas. No. 18018; *Ely v. M. & B. Manuf. Co.*, 4 Fish. Pat. Cas. 64; Fed. Cas. No. 4431; *Scott v. Bilgerry*, 40 Miss. 119; *Motts v. Bennett*, 2 Fish. Pat. Cas. 642; Fed. Cas. No. 9884), nor to a proceeding under statutory provisions and forms specially provided (*Ableman v. Booth*, 21 How. 506; 3 Wis. 157; *Miller v. McQuerry*, 5 McLean, 469; Fed. Cas. No. 9583; *Ex parte Martin*, 2 Paine, 348; Fed. Cas. No. 9154); or a pro-

ceeding to assess damages. (*Bonaparte v. Camden R. R.*, Bald. 205; *Fed. Cas. No. 1617.*)

The first clause of this amendment relates only to United States courts. The States are left free to regulate trials in their own courts. (*Pearson v. Yewdall*, 95 U. S. 294; *Edwards v. Elliott*, 21 Wall. 532; *Walker v. Sauvinet*, 92 U. S. 90.) The constitution does not confer, but simply preserves inviolate where it existed already the right of trial by jury. (*McBride v. Stradley*, 103 Ind. 465; *Seeley v. Bridgeport*, 53 Conn. 1.) The wager of law if it ever had a legal existence in the United States, is completely abolished by the constitutional provisions for trial by jury. (*Childress v. Emory*, 8 Wheat. 642.) The right to trial by jury thus secured by the constitution cannot be impaired by blending with a claim cognizable at law a demand for equitable relief. (*Scott v. Neely*, 140 U. S. 106.) The remission of a part of the verdict, followed by a judgment for the remainder, as a condition of the denial of a new trial, does not deprive the defendant of his constitutional right have the question tried by a jury in violation of this amendment. (*Arkansas Valley Land & Cattle Co. v. Mann*, 130 U. S. 69.) On the trial of an equity case, a jury may be called into court in its discretion and issues be submitted to it. (*Wilson v. Riddle*, 123 U. S. 608. See also *Hodges v. Easton*, 106 U. S. 408; *Ex parte Wood*, 9 Wheat. 603; *Killian v. Ebbinhaus*, 110 U. S. 568.)

Waiver of jury.—Parties may by stipulation waive a jury and submit the case to the court. (*United States v. One Hundred Barrels Distilled Spirits*, “*Henderson’s Distilled Spirits*,” 14 Wall. 44.) It may be waived by stipulation of the parties. (*Ramberger v. Terry*, 103 U. S. 40; *Wayne v. Kennicott*, 103 U. S. 554; *Rev. Stats. sec. 649.*) The right to a jury trial may be waived by express agreement in

open court, and by implied consent. (*Dunlop v. Zunts*, "Moncure v. Zunts," 11 Wall. 416; *Kearney v. Case*, 12 Wall. 275; *Richmond v. Smith*, 15 Wall. 429.) Such a waiver sufficiently appears if the record declares that the cause was called for trial by the court, "the jury having been waived in writing." (*Fleitas v. Cockrem*, 101 U. S. 301.) A statement that "a jury having been impaneled and sworn, and the introduction of evidence having been commenced, by stipulation of parties duly entered, the jury was withdrawn, trial to the jury waived," etc., is insufficient to show consent in writing to a waiver. (*Cudahy Packing Co. v. Sioux Nat. Bank*, 32 U. S. App. 600; 69 Fed. Rep. 782.) A party present by counsel who goes to trial without objection or exception, voluntarily waives a jury trial, but if not present by himself or counsel, it is error for the court to try the case. (*Kearney v. Case*, 12 Wall. 275; *Baylis v. Travelers Ins. Co.*, 113 U. S. 316; *Morgan v. Gay*, 19 Wall. 81.) But such error cannot be taken advantage of collaterally. (*Maxwell v. Stewart*, 21 Wall. 71; 22 Wall. 77.) Trial by jury is a fundamental guaranty of the rights and liberties of the people; consequently, every reasonable presumption should be indulged against its waiver. (*Hodges v. Easton*, 106 U. S. 408.)

Right, when not to attach.—This section does not apply to a motion for summary relief (*Banning v. Taylor*, 24 Pa. St. 289), as that judgment may be entered against the surety on an appeal bond (*Hiriart v. Ballou*, 9 Peters, 156) or a judgment by default for failure to produce books and papers (*United States v. Distillery*, 6 Biss. 483; Fed. Cas. No. 14966), or for judgment on a forfeited recognizance (*People v. Quigg*, 59 N. Y. 83); nor does it apply to preliminary inquiries which do not involve a trial of the merits (*Ex parte Martin*, 2 Paine, 348; Fed. Cas. No. 9154),

nor to cases where the facts are conceded (*United States v. Anthony*, 11 Blatchf. 210; *Fed. Cas. No. 14459*), nor to a proceeding to annul the license of a pilot (*Low v. Commissioners*, *Charlt. R. M.* 302), nor to the imposition of a fine for failure to comply with the inspection laws (*Green v. Savannah*, *Charlt. R. M.* 368), nor where there is default in proceedings under confiscation laws, in a seizure on land (*Miller v. United States*, 11 Wall. 268); but in an information in rem, the claimant is entitled to a trial by jury. (*United States v. Barrels*, 1 Bond, 587; *Fed. Cas. No. 15938*; *United States v. Distillery*, 6 Biss. 483; *Fed. Cas. No. 14966*; *United States v. Packages*, Gilp. 235; *Fed. Cas. No. 15151*.) A trial by referees without the consent of the parties is not sanctioned (*United States v. Rathbone*, 2 Paine, 578; *Fed. Cas. No. 16121*); so a nonsuit cannot be ordered in any case without the consent of the plaintiff. (*Elmore v. Grymes*, 1 Peters, 469; *D'Wolf v. Rabaud*, 1 Peters, 476.) A statute appointing commissioners to determine titles, and making their award final, does not take away the right of trial by jury (*Barker v. Jackson*, 1 Paine, 559; *Fed. Cas. No. 989*); but the State legislature cannot direct the Federal courts, in a trial at common law, to appoint commissioners on questions which should be submitted to a jury. (*Green v. Biddle*, 8 Wheat. 1; *Bank of Hamilton v. Dudley*, 2 Peters, 492; *Rev. Stats. sec. 649*.)

Re-examination of causes.—The second clause of this article is substantial and independent, and applies to cases coming into federal courts from State courts, and protects the verdicts rendered therein. (*Justices v. Murray*, 9 Wall. 274.) The only mode of review is on motion for a new trial. (*Parsons v. Bedford*, 3 Peters, 433; *United States v. Wonson*, 1 Gall. 20; *Fed. Cas. No. 16750*; *Patrie v. Murray*, 43 Barb.

323, 29 How. Pr. 312; *Wetherbee v. Johnson*, 14 Mass. 412.) Since this amendment Congress cannot confer authority to grant a new trial by a re-examination of the facts tried by a jury, except to redress errors of law. (*Parsons v. Bedford*, 3 Peters, 433; *Bank of Hamilton v. Dudley*, 2 Peters, 492.) An act of Congress, so far as it authorizes the removal of causes after verdict, is in violation of this amendment. (*Benjamin v. Murray*, 28 How. Pr. 193; *Patrie v. Murray*, 43 Barb. 323; *Wetherbee v. Johnson*, 14 Mass. 412; and see *Spencer v. Lapsley*, 20 How. 264; *People v. Murray*, 5 Park. C. C. 577.) No review of the rulings of the court in the progress of the trial can be had, under Rev. Stat. sec. 649, unless the record shows that a written stipulation waiving a jury was filed with the clerk. (*Kearney v. Case*, 12 Wall. 275.)

§ 9. **Bail — Fines — Punishments.**—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (U. S. Const. Amend. art. 8.)

Bail.—This provision applies to national and not to State legislation. (*Barron v. Baltimore*, 7 Peters. 243; *Pervear v. Commonwealth*, 5 Wall. 480; *James v. Commonwealth*, 12 Serg. & R. 220; *Barker v. People*, 3 Cowen, 686.) The supreme court cannot on habeas corpus revise the sentence of an inferior court on the ground that the fine was excessive. (*Ex parte Watkins*, 7 Peters, 568.) The constitutional right to bail is not operative after trial and conviction. (*Ex parte Schwartz*, 2 Tex. Ct. App. 74.)

§ 10. **Equal protection of the laws.**—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (Const. U. S. Amend. 14, sec. 1.)

Constitutional law; protection of property rights. Depriving a person of his property without notice and without examination of witnesses is in contravention of the provision of the constitution guaranteeing protection to property rights. (Sullivan v. Oneida City, 61 Ill. 242.) That no person shall be deprived of life, liberty, or property without due process of law, is a principle of natural justice. (Brown v. Morrison, 5 Ark. 217.) Permitting a plaintiff to file a bill in chancery as an amendment to his declaration at law, according to the settled course of judicial proceedings in the State, is not a violation of the provision of the United States constitution, that no State shall deprive any person of life, liberty, or property without due process of law. (Holman v. Manning, 65 N. H. 228.)

Equal protection of the laws.—This clause applies to all cases where the equal protection of the laws is denied to defendant. (Virginia v. Rives, 100 U. S. 313.) "Equal protection of the laws," as here used, means equal right to resort to courts for the redress of wrongs and enforcement of rights, and exemption from unequal burdens or exactions of any kind. (Railroad Tax Cases, 13 Fed. Rep. 722; 8 Sawyer, 238; 18 Fed. Rep. 385.) Congress cannot provide for punishment of individuals conspiring to deprive others of equal protection of the laws; this clause is aimed

at State legislation only (*United States v. Harris*, 106 U. S. 629); nor does it relate to territorial or municipal arrangements for portions of a State. (*Missouri v. Lewis*, 101 U. S. 22.) A State statute discriminating between Chinese and other aliens is void, as denying them the equal protection of the laws. (*Baker v. Portland*, 5 Sawy. 566; *Fed. Cas. No. 777*; *Parrott's Case*, 6 Sawy. 349.) So, a statute forbidding employment of Chinese is void. (*Parrott's Case*, 6 Sawy. 349.) A city ordinance requiring prisoner's hair to be cut, being a more degrading punishment as to Chinese than to other aliens, discriminates as to the former, and is void. (*Ah Kow v. Nunan*, 5 Sawy. 552; *Fed. Cas. No. 6546*.) A law prohibiting aliens incapable of becoming citizens from fishing in State waters is discriminating and void. (*Re Ah Chong*, 6 Sawy. 451.) Statutes discriminating in the remedies under the law against nonresidents are void. (*Pearson v. Portland*, 69 Me. 278.) Whenever the law operates alike upon all persons and property similarly situated, equal protection cannot be said to be denied. (*Walston v. Nevins*, 128 U. S. 578.) State legislation simply forbidding a defendant to challenge the validity of service upon him, and which does not restrain him from protecting his property and rights, is not forbidden by this amendment. (*Kauffman v. Wooters*, 138 U. S. 285.) A statute providing for a more severe punishment of ex-convicts for the same offenses than of those not heretofore convicted does not deny to any person the equal protection of the laws. (*Re Boggs*, 45 Fed. Rep. 475.) This constitutional provision applies to corporations. (*Santa Clara County v. Southern Pacific R. R. Co.*, 118 U. S. 394.)

Due process of law; what is.—Due process of law simply requires that a person should be brought into court and have an opportunity to prove any fact for his protection. (*People v. Essex County*, 70 N. Y.

229; *Ulman v. Baltimore*, 72 Md. 587, 609.) It is such an exertion of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for protection of individual rights as these maxims prescribe, and is identical with "due course of law." (*Beyman v. Black*, 47 Tex. 558; *State v. Ashley*, 1 Ark. 513; *Ex parte Ah Fook*, 49 Cal. 402; *Bertholf v. O'Reilly*, 74 N. Y. 509.) It means the regular course of administration of the law through courts of justice by timely and regular proceedings to judgment and execution, according to the existing forms of the law. (*Dwight v. Williams*, 4 McLean, 586; *Fed. Cas. No. 4218*; *Murray v. Hoboken Land & Imp. Co.*, 18 How. 272; *Rees v. Watertown*, 19 Wall. 122; *Wilkinson v. Leland*, 2 Peters, 658; *Osborn v. Nicholson*, 13 Wall. 662.) It does not necessarily import a trial by jury, but includes summary remedies. (*Martin v. Mott*, 12 Wheat. 19; *United States v. Ferreira*, 13 How. 40; *Re Meador*, 1 Abb. U. S. 317; *Fed. Cas. No. 9375*; *Murray v. Hoboken Land & Imp. Co.*, *supra*. A State statute forbidding the granting of more than two new trials in the same cause on the facts, but allowing more for errors of law, is not in violation of the provision. (*Louisville etc. R. Co. v. Woodson*, 134 U. S. 614.) So a statute providing for the arrest of a defendant upon failure to comply with a decree against him does not violate this provision. (*Ex parte Murray*, 35 Fed. Rep. 496.) A principal may be arrested by his bail in another State than that where the bond is given and be transferred thereto, without an infringement of his right to due process. (*In re Von Der Ahe*, 85 Fed. 959.) The disposing by an appellate court, of a writ of error in a criminal case, in the absence of the accused, is in conformity to due process of law. (*Fielden v. State of Illinois*, 143 U. S. 452; *Schwab v. Berggren*, 143 U. S. 442.)

Notice essential.—A proceeding where one's property is summarily disposed of is, as to parties not having notice, not due process of law. (Re Ludwigson, 3 Woods, 13; Fed. Cas. No. 8601; Lavin v. Emigrant Ind. Sav. Bank, 18 Blatchf. 1; 1 Fed. Rep. 641.) Notices provided by statute may be sufficient to constitute due process of law, although not addressed to the persons whose property is affected by name, and although the property was not specifically described. (Lent v. Tillson, 72 Cal. 404. See Re Application of New York, 99 N. Y. 580; Ottawa v. Macy, 20 Ill. 413.) Notice is insufficient if it fails definitely to express the kind of improvement to be made. (Hawthorne v. East Portland, 13 Or. 271.)

Opportunity to be heard must be given.—Opportunity to be heard, when accorded by statute, is sufficient to constitute due process of law. (Lent v. Tillson, 72 Cal. 404.) Due process of law means in due course of proceedings, including notice and an opportunity to be heard. (Peerce v. Kitzmiller, 19 W. Va. 564; Burns v. Multnomah R. Co., 8 Sawy. 543; St. Louis v. Richeson, 76 Mo. 470.) Where individual rights are concerned a party is entitled to be heard, and it is not enough that some notice or information may be given; the law must itself provide for notice. (Kuntz v. Sumpton, 117 Ind. 1.)

§ 11. **Judges.**—The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. (U. S. Const. art. 3, sec. 1, cl. 2.)

Tenure of office.—Congress cannot limit the tenure of judicial offices, or diminish the compensation, or alter the stated time for payment. (Martin v. Hun-

ter, 1 Wheat. 304.) Judges of courts established by Congress must be appointed to hold office during good behavior. (Hayburn's Case, 2 Dall. 410, note; United States v. Ferreira, 13 How. 49; United States v. Todd, 13 How. 52.) The fees allowed to justices of the peace in the District of Columbia cannot be diminished during their continuance in office. (United States v. More, 3 Cranch, 160, note.) Territorial courts being erected in the exercise of the general sovereignty of the United States over territory it may own, their judges may be appointed for brief terms. (Amer. Ins. Co. v. Canter, 1 Peters, 511.) This case prohibits the imposition of a tax on the salary of a judge. (Commonwealth v. Mann, 5 Watts. & S. 415.) Judges cannot be required to perform any but judicial functions. (Hayburn's Case, 2 Dall. 410, note; United States v. Todd, 13 How. 52, note; United States v. Ferreira, 13 How. 49.)

§ 12. Supreme law of the land.—This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. (U. S. Const. art. 6, cl. 2.)

Constitution and acts of Congress.—The object of this Constitution was to establish a government which to the extent of its powers should be supreme within its sphere of action (Dobbins v. Commrs. of Erie Co., 16 Peters, 435; Ableman v. Booth, 21 How. 520; 3 Wis. 1; Cohens v. Virginia, 6 Wheat. 264; United States v. Rhodes, 1 Abb. U. S. 44; Fed. Cas. No. 16151; McCulloch v. Maryland, 4 Wheat. 316.)

The Constitution of the United States is the paramount law of the land, and the ordinance of 1787 is a part thereof. (*Prigg v. Commonwealth*, 16 Peters, 628; *New Jersey v. Wilson*, 7 Cranch, 164; *Terrett v. Taylor*, 9 Cranch, 43; *Von Hoffman v. Quincy*, 4 Wall. 535; *Taylor v. Taintor*, 16 Wall. 366; *Matter of Romaine*, 23 Cal. 585; *Pollard v. Kibbe*, 14 Peters, 417.) The constitution, treaties, and laws made by the general government on the rights, duties, and subjects specially enumerated and confided to their jurisdiction are exclusive and supreme as well by express provisions as by necessary implication. (*Dodge v. Woolsey*, 18 How. 331; *Farmers & M. Bank v. Dearing*, 91 U. S. 29; *Farrington v. Tennessee*, 95 U. S. 685; *Pensacola T. Co. v. West U. Tel. Co.*, 96 U. S. 1; *Sims' Case*, 7 Cush. 285; *U. S. v. Rhodes*, 1 Abb. U. S. 44; *Fed. Cas. No. 16151*.) The Constitution is by this clause made a part of the organic law of each State. (*Taylor v. Taintor*, 16 Wall. 366; *Matt. of Romaine*, 23 Cal. 585.) The Government of the United States and that of the States are to be considered as parts of the same system. (*Stearns v. U. S.*, 2 Paine, 300; *Fed. Cas. No. 13341*; *Gilmer v. Lime Point*, 18 Cal. 229.) The laws of the United States are supreme only when made in pursuance of the Constitution. (*Marbury v. Madison*, 1 Cranch, 137; *McCulloch v. Maryland*, 4 Wheat. 316.) And an act of Congress repugnant to the Constitution is void. (*Marbury v. Madison*, 1 Cranch, 137; *Ableman v. Booth*, 21 How. 520; 3 Wis. 1.) From the supremacy of the constitution and laws of the United States it necessarily results that the interpretation of the laws by the highest tribunal created by the law itself, must be equally supreme over the constitutions and laws of the several States. (*Warner v. The Uncle Sam*, 9 Cal. 697.) The law of a State, though enacted in the exercise of powers not controverted, if they interfere with the

laws of Congress must yield to them. (*Gibbens v. Ogden*, 9 Wheat. 1; 17 Johns. 488; 4 Johns. Ch. 150; *Brown v. Maryland*, 12 Wheat. 419; *Sinnot v. Davenport*, 22 How. 227.)

Treaty as supreme law.—A treaty is a solemn agreement between nations. (*Foster v. Neilson*, 2 Peters, 314; *Worcester v. State*, 6 Peters, 515; *Taylor v. Morton*, 2 Curt. 454; Fed. Cas. No. 13799.) It has the binding force of law (*The British Prisoners*, 1 Wood. & M. 72; Fed. Cas. No. 12734; *U. S. v. New Bedford Bridge*, 1 Wood. & M. 449; Fed. Cas. No. 15867), and binds the courts as much as an act of Congress. (*United States v. The Peggy*, 1 Cranch, 103.) It binds the nation in the aggregate and all its subordinate authorities and judges of every State. (*Ware v. Hylton*, 3 Dall. 199; *Marbury v. Madison*, 1 Cranch, 176; *Worcester v. Georgia*, 6 Peters, 575; *Calder v. Bull*, 3 Dall. 386; *Owings v. Norwood*, 5 Cranch, 348; *Satterlee v. Matthewson*, 2 Peters, 413; *Ex parte Garland*, 4 Wall. 399; *Cummings v. Missouri*, 4 Wall. 329; *People v. Gerke*, 4 Am. L. R. 604; 6 Op. Att.-Gen. 291; *Fellows v. Denniston*, 23 N. Y. 420.) When duly ratified it is the law of the land. (*Fellows v. Blacksmith*, 19 How. 366; *Pollard v. Kibbe*, 14 Peters, 414; *Doe v. Branden*, 16 How. 635; *Rhode Island v. Massachusetts*, 12 Peters, 657.) It is supreme only when made in pursuance of that authority which has been conferred upon the treaty-making department, and in relation to subjects over which it has jurisdiction. (*People v. Naglee*, 1 Cal. 232; *Taylor v. Morton*, 2 Curt. 454; Fed. Cas. No. 13799; *Jones v. Walker*, 2 Paine, 688; Fed. Cas. No. 7507; *Wilson v. Wall*, 34 Ala. 288.) It is to be regarded as equivalent to an act of Congress whenever it operates of itself, without the aid of any legislative provision; and where a treaty and an act of Congress are in conflict, the latest in date must control. (*Foster v. Neilson*,

2 Peters, 314; U. S. v. Arredondo, 6 Peters, 691; U. S. v. Percheman, 7 Peters, 51; Gordon v. Kerr, 1 Wash. C. C. 322; Fed. Cas. No. 5611.) Whether an act of Congress shall prevail over a treaty is a question solely of municipal law, as distinguished from public law. (Taylor v. Morton, 2 Curt. 454; Fed. Cas. No. 13799.) Federal and State judges are bound to determine any constitution or laws of any State contrary to any treaty null and void. (Ware v. Hylton, 3 Dall. 199; Society v. New Haven, 8 Wheat. 464.) If the supreme court has the power to declare a treaty void, it will exercise it only in a clear case. (Ware v. Hylton, 3 Dall. 199.) The validity of a treaty is necessary and voluntary. The necessary validity is of a judicial nature, and the voluntary of a political nature. (Jones v. Walker, 2 Paine, 688; Fed. Cas. No. 7507.) The word "treaty" is applied to Indians as well as to other nations. (Worcester v. Georgia, 6 Peters, 518; Turner v. Missionary Union, 5 McLean, 344; Fed. Cas. No. 14251.)

CHAPTER II.

JUDICIAL DISTRICTS.

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§ 34. Offenses punishable with death, where tried.

§ 35. Offenses on high seas, etc., where triable.

§ 36. Offenses begun in one district and completed in another.

§ 13 (530). **Creation of judicial districts.**—The United States shall be divided into judicial districts as follows: (Rev. Stats. sec. 530.)

§ 14 (531). **States originally constituting one district.**—The States of California,¹ Colorado,² Connecticut, Delaware, Indiana, Iowa,³ Kansas, Kentucky,⁴ Louisiana,⁵ Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, Vermont, and West Virginia, each constitute one judicial district. (Rev. Stats. sec. 131; 19 U. S. Stats. 61.)

1 California resolved into two districts. (24 U. S. Stats. 308.)

2 Colorado. (21 U. S. Stats. 76.)

3 Iowa resolved into two districts. (22 U. S. Stats. 172.)

4 Kentucky district divided. (25 U. S. Stats. 389.)

5 Louisiana, resolved into two districts. (21 U. S. Stats. 507.)

§ 15. **Newly admitted States.**—The following newly admitted States shall constitute each one judicial district, the name thereof to be the same as the name of the State: Idaho,¹ Montana,² North

Dakota,³ South Dakota,⁴ Washington,⁵ Wyoming,⁶ and Utah.⁷

1 26 U. S. Stats. 217.

2 25 U. S. Stats. 682.

3 26 U. S. Stats. 67.

4 26 U. S. Stats. 14.

5 26 U. S. Stats. 45.

6 26 U. S. Stats. 225.

7 28 U. S. Stats. 110.

When Congress enacts that a judicial district shall consist of a State, the boundaries of the district will afterward vary as those of the State vary. (Re Devoe Manuf. Co., 108 U. S. 40.)

The Yellowstone Park is included in the Wyoming district. (28 U. S. Stats. 73.)

§ 16. States constituting more than one district.—States constituting more than one United States judicial district are as follows: Alabama,¹ Arkansas,² California,³ Florida,⁴ Georgia,⁵ Illinois,⁶ Iowa,⁷ Louisiana,⁸ Michigan,⁹ Mississippi,¹⁰ Missouri,¹¹ New York,¹² North Carolina,¹³ Ohio,¹⁴ Pennsylvania,¹⁵ South Carolina,¹⁶ Tennessee,¹⁷ Texas,¹⁸ Virginia,¹⁹ Wisconsin.²⁰

1 Three districts, the southern, the middle, and the northern. (Rev. Stats. sec. 532.)

2 Two districts, the eastern and the western. (Rev. Stats. sec. 533.)

3 Two districts, the northern and the southern. (24 U. S. Stats. 309.)

4 Two districts, the northern and the southern. (20 U. S. Stats. 280.)

5 Two districts, the northern and the southern. (Rev. Stats. sec. 535.)

6 Two districts, the northern and the southern. (Rev. Stats. sec. 536.)

7 Two districts, the northern and the southern. (22 U. S. Stats. 172.)

8 Two districts, the western and the eastern. (21 U. S. Stats. 507.)

9 Two districts, the eastern and the western. (Rev. Stats. sec. 538.)

10 Two districts, the northern and the southern.

11 Two districts, the eastern and the western. (20 U. S. Stats. 35.)

12 Three districts, the northern, the eastern, and the southern. (Rev. Stats. sec. 541.)

13 Two districts, the eastern and the western. (Rev. Stats. sec. 543.)

14 Two districts, the northern and the southern. (Rev. Stats. sec. 544.)

15 Two districts, the eastern and the western. (Rev. Stats. sec. 545.)

16 Two districts, the eastern and the western. (Rev. Stats. sec. 546.)

17 Three districts, the eastern, the western, and the middle. (Rev. Stats. sec. 547.)

18 Three districts, the northern, the eastern, and the western. (Rev. Stats. sec. 548.)

19 Two districts, the eastern and the western. (Rev. Stats. sec. 549.)

20 Two districts, the eastern and the western. (Rev. Stats. sec. 550.)

ALABAMA.—The State of Alabama is divided into three districts, which shall be called the southern, middle and northern district of Alabama.

Southern district.—The southern district includes the counties of Mobile, Washington, Baldwin, Clarke, Marengo, Wilcox, Monroe and Conecuh.

Middle district.—The middle district includes

the counties of Montgomery, Aulanga, Coosa, Chambers, Randolph, Macon, Russell, Barbour, Pike, Henry, Dale, Coffee, Covington, Lowndes, Dallas, Perry, Butler, and Tallapoosa. (Rev. Stats. sec. 532.)

Northern district.—The northern district includes the remaining counties of the State, and also the counties of Sumter, Greene, Pickens, and Hale, detached from the southern district, and Tuscaloosa, Bibb, Shelby and Talladega, detached from the middle district, and attached to the northern district. (23 U. S. Stats. 18.)

1. *Southern division.*—The southern division shall include the counties of Sumter, Greene, Hale, Pickens, Tuscaloosa, Lamar, Fayette, Walker, Jefferson, Blount, Bibb, Shelby, Saint Clair, Etowah, Calhoun, Cleburne, Clay, Talladega, Cherokee, and De Kalb. 23 U. S. Stats. 18.)

2. *Northern division.*—The remaining counties in said northern district shall constitute the northern division thereof. (23 U. S. Stats. 18.)

ARKANSAS.—The State of Arkansas is divided into two districts, which shall be called the eastern and western districts of Arkansas. The western district includes the counties of Benton, Washington, Crawford, Sebastian, Scott, Polk, Sevier, Little River, Howard, Yell, Logan, Franklin, Johnson, Madison, Newton, Carroll, Boone, Pike, Hempstead, Miller, La Fayette, Nevada, Columbia, Union, Ouachita and Calhoun. The eastern district includes the residue of said State. (29 U. S. Stats. 590.)

Division of eastern district.—The eastern district is hereby divided into three divisions, to be known as the western, eastern, and northern divisions of the eastern district of Arkansas.

1. *Eastern division.*—The eastern division shall consist of the following counties, towit: Mississippi, Crittenden, Lee, Phillips, Clay, Craighead, Poinsett, Greene, Cross, Saint Francis, and Monroe, and all process issued against persons residing in such counties shall be returned to the courts to be held at the city of Helena. (29 U. S. Stats. 590.)

2. *Northern division.*—The counties of Independence, Cleburne, Stone, Izard, Baxter, Searcy, Marion, Sharp, Fulton, Randolph, Lawrence, and Jackson shall constitute the northern division, the courts to be held at the city of Batesville. (29 U. S. Stats. 590.)

3. *Western division.*—All the remaining counties of the eastern district of the State shall constitute the western division, the courts to be held at the city of Little Rock. (29 U. S. Stats. 590.)

Division of western district.—The western district is divided into two divisions to be known as Texarkana, and Fort Smith divisions respectively. The counties of Sevier, Howard, Pike, Little River, Hempstead, Miller, La Fayette, Columbia, Nevada, Ouachita, Calhoun, and Union shall constitute the Texarkana division, the courts to be held at Texarkana. The remaining counties of the western district of the State shall constitute the Fort Smith Division, the courts to be held at the city of Fort Smith. (29 U. S. Stats. 590.)

CALIFORNIA.—*Southern district created.*—All that portion of the State of California now comprised in the counties of San Diego, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Fresno, Tulare, and Kern is hereby detached from the United States judicial district of California, and made a separate judicial district, called the southern district of California.

Northern district.—The district of California shall hereafter be called the northern district of California, and shall consist of all the counties in said State not named in this act. (24 U. S. Stats. 309.)

The act of 1886, sec. 11, creating the southern district of California (Stats. 1886, p. 310) continues the district of California in existence for the trial and punishment of all offenses committed prior to the passage of the act. (*United States v. Benson*, 31 Fed. Rep. 896.)

COLORADO.—That when the State of Colorado shall be admitted into the Union by the Enabling Act approved March 3, 1875, the laws of the United States not locally inapplicable shall have the same force and effect within the said State as elsewhere in the United States; and said State shall constitute one judicial district, to be called the district of Colorado. (19 U. S. Stats. 61.) The circuit and district courts for the district of Colorado, and the judges thereof respectively, shall possess the same powers and jurisdiction and perform the same duties possessed and required to be performed by the other circuit and district

courts and judges of the United States, and shall be governed by the same laws and regulations. (19 U. S. Stats. 61.)

FLORIDA.—The State of Florida is divided into two districts, which shall be called the northern and southern districts of Florida. The southern judicial district of the State of Florida shall embrace the counties of Hernando, Hillsborough, Polk, Manatee, Monroe, Alachua, Baker, Bradford, Brevard, Clay, Columbia, Dade, Duval, Hamilton, Lake, Madison, Marion, Nassau, Orange, Osceola, Putnam, St. John, Sumpter, Suwannee, and Volusia; and terms of the district and circuit courts for said southern district shall be held at Jacksonville, Florida, in said State; and all the territories within the remaining counties shall constitute the northern judicial district. (20 U. S. Stats. 280; as amended; 28 U. S. Stats. 117; Rev. Stats. sec. 534.)

GEORGIA—*Northern district.*—The State of Georgia is divided into two districts, which shall be called the northern and southern districts of Georgia. The northern district includes the counties of Troup, Meriwether, Morgan, Greene, Taliaferro, Wilkes, and Lincoln, as they existed August 11, 1848, with all the counties north of them. (Rev. Stats. sec. 535.)

1. *Western division, northern district.*—A new division of the northern judicial district of the State of Georgia, to be known as the western division of the northern judicial district of Georgia, be, and the same is hereby, established, to be com-

posed of the following counties, towit: Muscogee, Heard, Troup, Meriwether, Harris, Talbot, Taylor, Marion, Chattahoochee, Stewart, Schley, Webster, Quitman, Clay, Randolph, Early, Miller, and Terrell, and all of said counties which may not now belong for judicial purposes to the northern district of the State of Georgia, be, and the same are hereby, transferred to the said northern district. (26 U. S. Stats. 1110.)

2. *Eastern division.*—The eastern division shall consist of the remaining counties in said district. No additional clerk or marshal shall be appointed in said district. (21 U. S. Stats. 63.)

Southern district.—The southern district includes the counties of Harris, Talbot, Uxson, Monroe, Jones, Putnam, Hancock, Warren, Columbia, Pike, Butts, and Jasper,¹ as they existed August 11, 1848, with al the counties south of them.

1 Pike, Butts, and Jasper were transferred to the southern district by 21 U. S. Stats. 63.

1. *Northeastern division of Southern district.*—The northeastern division of the southern judicial district of Georgia shall be composed of the counties of Warren, Glascock, McDuffie, Columbia, Richmond, Burke, Jefferson, Johnson, and Washington of the southern district, and of the counties of Lincoln, Wilkes, and Taliaferro of the northern district, detached from the northern and made part of the northeastern division of the southern district. (25 U. S. Stats. 671.)

2. *Western division, southern district.*—The western division of the southern district shall con-

sist of the counties of Bibb, Monroe, Jones, Twiggs, Houston, Crawford, Baldwin, Wilkenson, Laurens, Pulaski, Dooly, Macon, Upson, Pike, Butts, Jasper, Putnam, Hancock, Dodge, Wilcox, Telfair, Sumter, Lee, Calhoun, Dougherty, Baker, and Mitchell. (21 U. S. Stats. 63; 26 U. S. Stats. 1110.)

IDAHO—*Division of district.*—That for the purpose of holding terms of the district court, said district is divided into three divisions, to be known as the northern, the central and southern divisions. The territory composing the counties of Idaho, Kootenai, Latah, Nez Perces, and Shoshone, including any and all Indian reservations within such territory, constitute the northern division, the court for which must be held at the town of Moscow. The territory composing the counties of Ada, Boise, Blaine, Cassia, Canyon, Lincoln, Elmore, Owyhee, and Washington, including any and all Indian reservations within said territory, constitute the central division, the court for which must be held at Boise City. The territory composing the counties of Bingham, Bannock, Bear Lake, Custer, Fremont, Lemhi, and Oneida, including any and all Indian reservations within such territory, constitute the southern division, the court for which must be held at the town of Pocatello. (30 U. S. Stats. 424.)

ILLINOIS—*Northern and southern district.*—The State of Illinois is divided into two districts, which shall be called the northern and southern districts of Illinois. The northern district in-

cludes the counties of Henderson, Warren, Knox, Peoria, Woodford, Livingston, and Iroquois, as they existed February 13, 1855, with all the counties north of them. The southern district includes the residue of said State. (Rev. Stats. sec. 536.)

Northern districts.—The counties of McDonough, Fulton, and Tazewell be detached from the southern district of Illinois, and be included in the northern district of Illinois. (24 U. S. Stats. 442.)

1. *Divisions of Northern districts.*—The northern district of Illinois shall be divided into two divisions, to be known as the northern and southern divisions. The counties of Peoria, Stark, Henry, Rock Island, Mercer, Henderson, Warren, Knox, McDonough, Fulton, Putnam, Marshall, Woodford, Tazewell, Livingston, and Iroquois shall constitute the southern division of said northern district of Illinois, the courts for which shall be held at the city of Peoria. (24 U. S. Stats. 442.)

IOWA—*Northern and southern districts.*—The State of Iowa be, and the same is hereby, divided into two judicial districts, in manner following, to-wit: The counties of Black Hawk, Hamilton, Webster, Calhoun, Sac, Ida, Monona, and all the counties north of those named shall constitute a new district, to be known as the northern district of Iowa.¹ The remaining counties of the State shall constitute the southern district of Iowa, and the present district court of Iowa, from and after the passage of this act, shall be known as the district court for the southern district of Iowa. (22 U. S. Stats. 172; Rev. Stats. sec. 537.)

1 The counties of Clinton, Jones, Linn, Benton, Grundy and Hardin were taken from the list of counties named in the original (sec. 537 of the Rev. Stats.) to form with certain counties taken from the southern district a new division of the northern district. (See 26 U. S. Stats. 767.)

The act dividing the State of Iowa into two districts did not abolish the district of Iowa; the name and territorial jurisdiction alone were affected. (In re Mason, 85 Fed. Rep. 145.)

Cedar Rapids division.—The counties of Cedar, Johnston, Iowa, and Tama be, and hereby are, transferred to the northern district and made a part thereof; and that said counties and the counties of Grundy, Hardin, Benton, Linn, Jones, and Clinton shall constitute a new division in said northern district, the terms of court for which shall be held at the city of Cedar Rapids. All the provisions of said act approved July twentieth, eighteen hundred and eighty-two, shall be applicable to the division created by this act. (26 U. S. Stats. 767.)

Division of northern district.—For the purpose of holding terms of court the northern district shall be divided into three divisions, to be known as the eastern, central, and western divisions. The counties of Jackson, Black Hawk, Buchanan, Delaware, Dubuque, Clayton, Fayette, Bremer, Floyd, Chickasaw, Mitchell, Howard, Winneshiek, and Alamakee shall constitute the eastern division, the courts for which shall be held at the city of Dubuque.¹ The counties of Hamilton, Webster, Calhoun, Pocahontas, Palo Alto, Emmett, Kossuth,

Humboldt, Wright, Hancock, Winnebago, Worth, Cerro Gordo, Franklin, and Butler shall constitute the central division, the courts for which shall be held at Fort Dodge. The counties of Monona, Woodbury, Plymouth, Sioux, Lyon, Osceola, O'Brien, Cherokee, Ida, Sac, Buena Vista, Clay, and Dickinson shall constitute the western division, the courts for which shall be held at Sioux City. (22 U. S. Stats. 172.)

1 The counties of Clinton, Jones, Linn, and Benton were taken from the eastern division, and the counties of Grundy and Hardin were detached from the central division to form the Cedar Rapids division. (26 U. S. Stats. 767. See above.)

Division of southern district.—For the purpose of holding terms of court the southern district of Iowa shall be divided into three divisions, to be known as the eastern, central, and western divisions. The counties of Scott, Muscatine, Washington, Louisa, Keokuk, Appanoose, Davis, Wapello, Jefferson, Van Buren, Henry, Des Moines, and Lee shall constitute the eastern division, for which the courts shall be held at the city of Keokuk. The counties of Poweshiek, Mehaska, Jasper, Marshall, Story, Boone, Greene, Guthrie, Adair, Dallas, Polk, Madison, Warren, Marion, Clark, Lucas, Decatur, Monroe, and Wayne shall constitute the central division, for which the courts shall be held at the city of Des Moines¹. The counties of Carroll, Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, Montgomery, Adams, Union, Ringgold, Taylor, Page, and Fremont shall consti-

tute the western division, in which the courts shall be held at the city of Council Bluffs; provided, that the additional courts at the places in the several divisions named in this act shall be held in buildings provided for that purpose without expense to the United States. (20 U. S. Stats. 172.)

1 The counties of Cedar, Johnson, Iowa, and Tama were detached from the eastern and central divisions of the southern district, and added to the Cedar Rapids division of the northern district. (26 U. S. Stats. 767. See above, Cedar Rapids division.)

KANSAS—*Division of district.*—The judicial district of Kansas is hereby divided into three divisions. The second division shall include the counties of Crowley, Butler, Harvey, McPherson, Rice, Ellsworth, Barton, Rush, Ness, Lane, Scott, Wichita, Greely, Hamilton, Kearny, Finny, Garfield, Hodgeman, Pawnee, Stafford, Reno, Kingman, Pratt, Kiowa, Edwards, Ford, Gray, Haskell, Grant, Stanton, Morton, Sedgwick, Stevens, Seward, Meade, Clark, Comanche, Harper, Barber, and Sumner. The counties of Miami, Linn, Bourbon, Crawford, Cherokee, Labette, Neosho, Allen, Anderson, Coffey, Woodson, Wilson, Montgomery, Chautauqua, Elk, Greenwood, in the State of Kansas, shall constitute the third division. The remaining counties embraced in the district of Kansas shall constitute the first division thereof. (26 U. S. Stats. 149; 27 U. S. Stats. 24.)

Prior to 1895 the United States courts in Arkansas, Kansas, and Texas had jurisdiction of offenses against the laws of the United States committed in

the Indian Territory, but by the act of March 1, 1895, such jurisdiction was taken away from such courts and conferred on the courts created in Indian Territory. (28 U. S. Stats. 697.)

KENTUCKY—*Owensborough division*.—The counties of Daviess, Henderson, Union, Christian, Todd, Hopkins, Webster, McLean, Muhlenberg, Logan, Butler, Grayson, Ohio, Hancock, and Breckenridge shall hereafter constitute and be known as the Owensborough division of said district. (25 U. S. Stats. 389.)

LOUISIANA—*Western district*.—The parishes of Caddo, Bossier, Webster, Claiborne, Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Bienville, Red River, De Soto, Sabine, Winn, Natchitoches, Jackson, Caldwell, Franklin, Tensas, Concordia, Catahoula, Grant, Vernon, Rapides, Avoyelles, Saint Landry, La Fayette, Saint Martin's, Vermillion, Cameron, and Calcasieu, in the State of Louisiana, shall constitute, and is hereby created, the western judicial district in that State; and the district court now existing in Louisiana shall, from and after the passage of this act, be known as the district court for the eastern district of Louisiana, and all the parishes in said State not above named shall belong to said district. (21 U. S. Stats. 507.)

MICHIGAN.—The State of Michigan is divided into two districts, which shall be called the eastern and western districts of Michigan. The western district includes the territory and waters within the following boundaries, as they existed Febru-

ary 24, 1863, namely: Commencing at the southwest corner of Branch county, in said State, and running thence north, on the west line of Branch and Calhoun counties, to the south line of Barry county; thence east, on the north line of Calhoun and Jackson counties, to the southeast corner of Eaton county; thence north, on the east boundary of Eaton county, to the south line of Clinton county; thence west, on the south boundary of said county, to the southwest corner thereof; thence north, on the west boundary of Clinton and Gratiot counties, to the south boundary of Isabella county; thence west, on its south boundary, to the southwest corner of said last-named county; thence north, on the west line of Isabella and Clare counties, to the south boundary of Missaukee county; thence east, on its south boundary, to the southeast corner of Missaukee county; thence north, on the east line of Missaukee, Kalamazoo, and Antrim counties, to the south boundary of Emmett county; thence east, to the southeast corner of Emmett county; thence north, on the east boundary of Emmett county, to the straits of Mackinac; thence north, to midway across said straits; thence westerly, in a direct line, to a point on the shore of Lake Michigan, where the north boundary of Delta county reaches Lake Michigan; thence west, on the north line of Delta county, to the northwest corner of said Delta county; thence south, on the west boundary of said county, to the dividing line between the States of Michigan and Wisconsin, in Green Bay; thence northeasterly, on said dividing

line, into Lake Michigan; and thence southerly through Lake Michigan, to the southwest corner of the State of Michigan, on a line that will include within said boundaries the waters of Lake Michigan within the admiralty jurisdiction of the State of Michigan; thence east on the south boundary of the State of Michigan to the intersection of the west line of Hillsdale county. The eastern district includes all the territory and waters of said State not included within the foregoing boundaries. (Rev. Stats. sec. 538.)

Western judicial district.—The counties of Chippewa, Schoolcraft, Marquette, Houghton, Keweenaw, Ontonagon, Isle Royale, Baraga, and Mackinaw, being and including all that portion of the territory and waters of said eastern district lying in the upper peninsula of Michigan, be and the same are hereby detached from the eastern judicial district of Michigan and attached to the western judicial district of said State. (20 U. S. Stats. 175.)

1. *Divisions of western district.*—For the trial and determination of all causes and proceedings cognizable and triable in the circuit and district courts of the United States for the western district of Michigan as bounded and described in this act, the said district shall consist of two divisions, known, respectively, as the southern and northern divisions of said district. The southern division shall comprise all that portion of said district lying and being in the lower peninsula of said State, and the northern division of said district shall comprise

all the territory and waters of the entire upper peninsula of said State. (20 U. S. Stats. 175.)

Division of eastern district.—The eastern district of Michigan is hereby divided into two divisions, to be known as the northern division and the southern division, respectively.

1. *Northern division.*—The following named counties shall be and constitute the northern division: Cheboygan, Presque Isle, Otsego, Montmorency, Alpena, Crawford, Oscoda, Alcona, Roscommon, Ogeman, Iosco, Clare, Gladwin, Arenac, Isabella, Midland Bay, Tuscola, Huron, Gratiot, Saginaw, Shiawassee, and Genesee. (28 U. S. Stats. 67.)

2. *Southern division.*—The following named counties shall constitute the southern division: Saint Clair, Lapeer, Sanilac, Macomb, Oakland, Livingston, Ingham, Clinton, Jackson, Washtenaw, Wayne, Branch, Hillsdale, Lenawee, Calhoun, and Monroe. (28 U. S. Stats. 67.)

MINNESOTA—*Subdivision of district.*—For the purpose of holding terms of court the district of Minnesota is hereby divided into six divisions, to be known as the first, second, third, fourth, fifth, and sixth divisions. (26 U. S. Stats. 73.)

1. *First division.*—The portion of the State of Minnesota comprising the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston shall constitute the first division, the courts of which shall be held at Winona. (26 U. S. Stats. 73.)

2. *Second division.*—The counties of Freeborn, Fairbault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Wantonwan, Blue Earth, Waseca, Le Soeur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac Qui Parle shall constitute the second division, the courts of which shall be held at Mankato. (26 U. S. Stats. 73.)

3. *Third division.*—The counties of Chicago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott shall constitute the third division, the courts of which shall be held at Saint Paul. (26 U. S. Stats. 73.)

4. *Fourth division.*—The counties of Hennepin, Wright, Meeker, Kandiyohi, Swift, Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Santi shall constitute the fourth division, the courts of which shall be held at Minneapolis. (26 U. S. Stats. 73.)

5. *Fifth division.*—The counties of Cook, Lake, Saint Louis, Itasca, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton shall constitute the fifth division, the courts of which shall be held at Duluth. (26 U. S. Stats. 73.)

6. *Sixth division.*—The counties of Stearns, Pope, Stevens, Big Stone, Traverse, Grant, Douglas, Todd, Otter Tail, Wilkin, Clay, Becker, Wadena, Norman, Polk, Marshall, Kittson, Beltrami, and Hubbard shall constitute the sixth division, the courts of which shall be held at Fergus Falls. (26 U. S. Stats. 73.)

MISSISSIPPI—*Division into districts.*—The State of Mississippi is hereby divided into two districts, which shall be called the northern and southern districts of Mississippi. The northern district shall include the counties of Winston, Carroll, Attala, Bolivar, Coahoma, Tunica, De Soto, Tate,¹ Marshall, Panola, Benton,¹ Tippah, Tishomingo, Alcorn,¹ Prentiss,¹ Sunflower,¹ Itawamba, Lee,¹ Monroe, Lowndes, Oktibbeha, Choctaw, Montgomery,¹ Grenada,¹ Tallahatchee, La Fayette, Pontotoc, Union,¹ Chickasaw, Webster,¹ Clay,¹ Calhoun,¹ Quitman,¹ and Yalabusha, as they now exist. The southern district shall include the residue of said State.²

1 The counties of Tate, Benton, Alcorn, Prentiss, Sunflower, Lee, Montgomery, Grenada, Union, Webster, Clay, Calhoun, and Quitman, were added by the act of Congress of June 15, 1882. (22 U. S. Stats. 101.)

2 The counties of Kemper, Neshoba and Noxubee were taken from the northern and added to the southern district by act of Congress of July 18, 1894. (23 U. S. Stats. 114.)

1. *Division of northern district.*—The northern judicial district of the State of Mississippi, as now hereby constituted, shall be divided into an eastern and western division; that the counties of Tishomingo, Alcorn, Prentiss, Itawamba, Lee, Pontotoc, Monroe, Chickasaw, Clay, Oktibbeha, Lowndes, Winston, Choctaw, and Attala,¹ shall compose the eastern division of said northern judicial district. (22 U. S. Stats. 101.) All the other counties em-

braced in the northern judicial district, as now hereby constituted, shall compose the western division of said northern judicial district. (22 U. S. Stats. 101.)

1 The county of Attala is transferred from the western division of the northern district to the eastern division of said district. (22 U. S. Stats. 127.)

1. *Southern district, southern division.*—The counties of Hancock, Harrison, Jackson, Marion, Perry, and Green, being a part of the southern judicial district of Mississippi, shall be known as the southern division of said district. (25 U. S. Stats. 78.)

Eastern division.—The counties of Lauderdale, Kemper, Noxubee, Leake, Neshoba, Newton, Jasper, Clarke, Wayne, and Jones shall be known as the eastern division of said southern district, and circuit and district courts for the transaction of business pertaining to the persons and property in said eastern division shall be held at the city of Meridian. (28 U. S. Stats. 114.)

2. *Western division.*—The counties of Washington, Sharkey, Isaquena, Warren, Bolivar,* Sunflower and Claiborne* shall constitute a part of the southern judicial district of Mississippi, and shall be known as the western division of said district. (24 U. S. Stats. 430; 25 U. S. Stats. 84; 30 U. S. Stats.)

MISSOURI.—The State of Missouri is divided into two districts, which shall be called the eastern and the western district of Missouri. (20 U. S. Stats. 35; Rev. Stats. sec. 540.)

Eastern district.—The city of Saint Louis and the following named counties in the State of Missouri shall constitute the eastern judicial district of Missouri, towit: Saint Louis, Franklin, Gasconade, Jefferson, Crawford, Washington, Saint Francois, Saint Genevieve, Dent, Iron, Madison, Perry, Bollinger, Cape Girardeau, Shannon, Reynolds, Wayne, Scott, Carter, Oregon, Ripley, Butler, Stoddard, New Madrid, Mississippi, Dunklin, Pemiscot, Montgomery, Lincoln, Warren, Saint Charles, Macon, Adair, Audrain, Clarke, Knox, Lewis, Marion, Monroe, Pike, Ralls, Schuyler, Scotland, Shelly [Shelby] and Randolph. (24 U. S. Stats. 424; as amended, 25 U. S. Stats. 498, and 29 U. S. Stats. 502.)

Divisions of eastern district.—The eastern judicial district of Missouri is hereby divided into two divisions, which shall be known, respectively, as the northern and eastern divisions of said eastern district. The city of Saint Louis, and the counties of Saint Louis, Franklin, Gasconade, Jefferson, Crawford, Washington, Saint Francois, Saint Genevieve, Dent, Iron, Madison, Perry, Bollinger, Cape Girardeau, Shannon, Reynolds, Wayne, Scott, Carter, Oregon, Ripley, Butler, Stoddard, New Madrid, Mississippi, Dunklin, Pemiscot, Montgomery, Lincoln, Warren [Audrain?], and Saint Charles shall constitute the eastern division of said district, the courts for which are now established and held, and shall be continued at the city of Saint Louis. The remaining counties within the eastern district shall constitute the northern divis-

ion of said district, and the courts therefor shall be held at the city of Hannibal. (24 U. S. Stats. 424; as amended, 29 U. S. Stats. 502.)

Western district.—All the other counties in the State of Missouri shall constitute the western judicial district of Missouri. (24 U. S. Stats. 424.)

Divisions of western district.—The western judicial district of Missouri shall be divided into four divisions, to be known as the Saint Joseph, the western, the central, and the southern divisions. (24 U. S. Stats. 424.)

1. *Western division.*—The counties of Clay, Ray, Carroll, Chariton, Sullivan, Jackson, La Fayette, Saline, Cass, Johnston, Bates, Henry, Vernon, Putnam, Caldwell, Livingston, Grundy, Mercer, Linn, Barton, Jasper, and Saint Clair shall constitute the western division, the courts, circuit and district, for which shall be continued at the city of Kansas. (24 U. S. Stats. 424.)

2. *St. Joseph division.*—The counties of Atchison, Nodaway, Holt, Andrew, Buchanan, Platte, Clinton, Harrison, Daviess, De Kalb, Gentry, and Worth shall constitute the Saint Joseph division, and the courts therefor shall be held at the city of Saint Joseph. (24 U. S. Stats. 424.)

3. *Southern division.*—The counties of Cedar, Polk, Dallas, Laclede, Pulaski, Dade, Greene, Webster, Wright, Texas, Lawrence, Christian, Douglas, Howell, Newton, Barry, McDonald, Stone, Taney, and Ozark shall constitute the southern division of said western district, the courts for which shall be

held at the city of Springfield. (24 U. S. Stats. 424.)

4. *Central division*.—The remaining counties within the said western district shall constitute the central division of said district, and the courts, circuit and district, therefor, shall be continued and held at Jefferson City. (24 U. S. Stats. 424.)

Counties attached.—The counties of Cedar, Polk, Greene, Dade, Lawrence, Newton, McDonald, Barry, and Stone of the southern division of the western district aforesaid, be and they are hereby attached to the western division of the western district for circuit court purposes as to all civil causes and proceedings, and that all other counties in said southern division of the western district be, and they are hereby attached to the central division of the western district for circuit court purposes as to all civil causes and proceedings. The district judges for the eastern and western district of Missouri, each in the divisions of his proper district, and the circuit judge of the United States for the eighth judicial circuit, are hereby required to hold the courts aforesaid. (24 U. S. Stats. 424.)

MONTANA.—Division of district act of 1892, 27 U. S. Stats. 252; repealed, 30 U. S. Stats. 685.

NEW YORK.—The State of New York is divided into three districts, which shall be called the northern, eastern, and southern districts of New York. The northern district includes the counties of Rensselaer, Albany, Schoharie, and Delaware, with all the counties north and west of them. The eastern district includes the counties of Richmond,

Kings, Queen's and Suffolk, with the waters thereof. The southern district includes the residue of said State, with the waters thereof. (18 U. S. Stats. 317; Rev. Stats. sec. 541.)

NORTH CAROLINA.—The State of North Carolina is divided into two districts, which shall be called the eastern and western districts of North Carolina. The western district includes the counties of Mecklenburg, Cabarras, Stanly, Montgomery, Davie, Davidson, Randolph, Guilford, Rockingham, Stokes, Forsyth, Union, Anson, Caswell, Alamance, Orange, Clay, Cherokee, Swain, Macon, Jackson, Graham, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, Mitchell, Watauga, Ashe, Alleghany, Caldwell, Burke, McDowell, Rutherford, Polk, Cleveland, Gaston, Lincoln, Catawba, Alexander, Wilkes, Surry, Iredell, Yadkin, and Rowan, and all territory embraced therein which may hereafter be erected into two new counties. The eastern district includes the residue of said State. (Rev. Stats. sec. 543; as amended, 28 U. S. Stats. 274.)

NORTH DAKOTA—*Division of districts.*—For the purpose of holding terms of the district court, said district shall be divided into four divisions, to be known as the southwestern, southeastern, northeastern, and northwestern divisions. (26 U. S. Stats. 67.)

1. *Southwestern division.*—The portion of the State comprising the present counties of Burleigh, Stutsman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, and all the territory in said

State of North Dakota lying south and west of the Missouri river, shall continue the southwestern division, the court for which shall be held at the city of Bismark. (26 U. S. Stats. 67.)

2. *Southeastern division*.—The portion of the State comprising the present counties of Cass, Richland, Barnes, Dickey, Sargent, La Moure, Ransom, Griggs, and Steele shall continue the southeastern division, the court for which shall be held at the city of Fargo. (26 U. S. Stats. 67.)

3. *Northeastern division*.—The portion of the State comprising the present counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson shall constitute the northeastern division, the court for which shall be held at the city of Grand Forks. (26 U. S. Stats. 67.)

4. *Northwestern division*.—The portion of the State comprising the present counties of Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, McHenry, and Ward, and all the territory in said State of North Dakota, lying north of the said southwestern division, shall constitute the northwestern division, the court for which shall be held at the city of Devil's Lake. (26 U. S. Stats. 67.)

OHIO.—*Division into districts*.—The State of Ohio is divided into two districts, which shall be called the northern and southern districts of Ohio. The southern district includes the counties of Belmont, Guernsey, Muskingum, Licking, Franklin, Madison, Champaign, Shelby, Mercer,¹ as they existed February 10, 1855, with all the counties south

of them. The northern district includes the residue of said State. (Rev. Stats. sec. 544.)

1 Union, Delaware, Morrow, Knox, Coshocton, Harrison and Jefferson were transferred to the southern district by 21 U. S. Stats. 63.

Northern district division.—The northern district shall be, and hereby is, divided into two divisions, to be known as the eastern and western division of the northern district of Ohio. The western division shall consist of twenty-four counties, towit: Williams, Defiance, Paulding, Van Wert, Mercer, Auglaise, Allen, Putnam, Henry, Fulton, Lucas, Wood, Hancock, Hardin, Logan, [Union], Delaware, Marion, Wyandotte, Seneca, Sandusky, Ottawa, Erie, and Huron; and the eastern division shall consist of the remaining counties in said district. But no additional clerk or marshal be appointed in said district. (20 U. S. Stats. 102.)

Southern district, division of.—The southern district shall be, and hereby is, divided into two divisions, to be known as the eastern and the western division of the southern district of Ohio. The eastern division shall consist of twenty-nine counties, towit: Union, Delaware, Morrow, Knox, Coshocton, Harrison, Jefferson, Madison, Fayette, Franklin, Pickaway, Ross, Pike, Gallia, Jackson, Meigs, Vinton, Athens, Hocking, Fairfield, Licking, Perry, Muskingum, Morgan, Washington, Noble, Monroe, Belmont, and Guernsey; and the western division shall consist of the remaining counties in

said district. But no additional clerk or marshal shall be appointed in said district. (21 U. S. Stats. 64.)

1. *Eastern division.*—The county of Logan, in the State of Ohio, be detached from the northern and attached to the southern judicial district of the State of Ohio, and assigned to the eastern subdivision therein. (26 U. S. Stats. 799.)

PENNSYLVANIA.—The State of Pennsylvania is divided into two districts, which shall be called the eastern and western districts of Pennsylvania. The western district includes the counties of Fayette, Greene, Washington, Allegheny, Westmoreland, Somerset, Bedford, Huntington, Centre, Mifflin, Clearfield, McKean, Potter, Jefferson, Cambria, Indiana, Armstrong, Butler, Beaver, Mercer, Crawford, Venango, Erie, Warren, Susquehanna, Bradford, Tioga, Union, Northumberland, Columbia, Luzerne, and Lycoming, as they existed April 20, 1818. The eastern district includes the residue of said state. (Rev. Stats. sec. 545.)

SOUTH CAROLINA.—The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the district of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The eastern district includes the residue of said State. (Rev. Stats. sec. 546.)

All parts of the State of South Carolina are within the jurisdiction of the United States circuit court for the eastern district. (*Young v. Merchants Ins. Co.*, 29 Fed. Rep. 273.)

SOUTH DAKOTA—*Division of district.*—For the purpose of holding terms of the district court said district shall be divided into four divisions, to be known as the southern, northern, central, and western divisions. (28 U. S. Stats. 5.)

1. *Southern division.*—The counties of Clay, Union, Yankton, Turner, Lincoln, Bonhomme, Charles, Mix, Douglas, Hutchinson, Brule, Aurora, Davison, Hanson, McCook, Minnehaha, Moody, Lake, Lyman, Miner, Sanborn, Beadle, Gregory, Kingsbury, and Todd, and the Yankton, Crow Creek, and Lower Brule Indian reservations, shall constitute the southern division, the court for which shall be held at the city of Sioux Falls. (28 U. S. Stats. 5.)

2. *Northern division.*—The counties of Brookings, Hamlin, Deuel, Grant, Roberts, Codington, Clark, Day, Marshall, Spink, Brown, McPherson, Edmunds, Campbell, Walworth, and the Sisseton and Wahpeton reservation shall constitute the northern division, the court for which shall be held at Aberdeen. (28 U. S. Stats. 5.)

3. *Central division.*—The counties of Potter, Sully, Faulk, Hand, Hyde, Hughes, Buffalo, Jerauld, Stanley, Nowlin, and that portion of the counties of Pratt, Jackson, and Sterling not included in any Indian reservation, and the Standing Rock and Cheyenne Indian reservations, shall con-

stitute the central division, the court for which shall be held at the city of Pierre. (28 U. S. Stats. 5.)

4. *Western division*.—All that portion of the State of South Dakota lying west of the central and southern divisions, and in addition thereto the Rosebud and Red Cloud Indian reservations, shall constitute the western division, the court for which shall be held at the city of Deadwood. (28 U. S. Stats. 5.)

TENNESSEE.—The State of Tennessee is divided into three districts, which shall be called the eastern, western, and middle districts of Tennessee. The eastern district includes the counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, McMinn, Marion, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Union, Washington and Grundy,¹ as they existed February 10, 1856. The western district includes the counties of Benton, Carroll, Henry, Obion, Dyer, Gibson, Lauderdale, Haywood, Tip-ton, Shelby, Fayette, Hardeman, McNairy, Hardin, Madison, Henderson, Perry and Weakley, as they existed June 18, 1838. The middle district includes the residue of said state.² (Rev. Stats. sec. 547.)

¹ Grundy was transferred from the middle to the eastern district by 21 U. S. Stats. 175.

² Perry county was transferred from the western to the middle district by 18 U. S. Stats. 480. and re-transferred to the western by 29 U. S. Stats. 91.

Eastern district, division of.—The eastern district shall be and is hereby divided into two divisions, to be known as the northern and southern divisions of the eastern district of Tennessee. The southern division shall consist of the following counties, towit: Hamilton, James, Polk, McMinn, Bradley, Meigs, Rhea, Marion, Sequatchie, Bledsoe, Grundy, Fentress¹ and Cumberland; and the northern division shall consist of the remaining counties in said district. But no additional clerk or marshal shall be appointed in said district. (21 U. S. Stats. 175.)

¹ The county of Fentress was detached from the middle district, and added to the southern division of the eastern district by 23 U. S. Stats. 280.

Western district, division of.—The western district of Tennessee is hereby divided into two divisions, which shall be known as the eastern and western divisions thereof. The eastern division shall include the counties of Benton, Hardeman,¹ Carroll, Decatur, Gibson, Henderson, Henry, Madison, McNairy, Harden, Dyer, Lake, Crockett, Weakley and Obion. (20 U. S. Stats. 206.)

¹ Hardeman county was attached to the eastern division of the western district by act of January 15, 1883. (22 U. S. Stats. 402.)

1. *Western division.*—The remaining counties embraced in said district shall constitute the western division thereof; and terms of the district and circuit courts of the United States for said district shall be held therein at the times and place now prescribed by law. (20 U. S. Stats. 235.)

TEXAS—*Northern district*.—A judicial district is hereby created in the State of Texas, to be called the northern judicial district of said State, and the territory embraced in the following named counties¹ as now constituted shall compose said district, namely: Brazos, Robertson, Leon, Limestone, Freestone, Navarro, Ellis, Kaufmann, Dallas, Rockwall, Hunt, Fannin, Lamar, Delta, Collin, Menard, Cooke, Denton, Tarrant, Johnson, Hill, McLennan, Falls, Bell, Coryell, Hamilton, Bosque, Comanche, Erath, Somerville, Hood, Parker, Palo Pinto, Jack, Wise, Montague, Clay, Archer, Wichita, Wilbarger, Hardeman, Knox, Baylor, Haskell, Throckmorton, Young, Stevens, Shackelford, Jones, Taylor, Callahan, Eastland, Brown, Coleman, Runnels, Nolan, Fisher, Stonewall, King, Cottle, Childress, Collingsworth, Wheeler, Hemphill, Lipscomb, Ochiltree, Roberts, Gray, Donley, Hall, Motley, Dickens, Kent, Scurry, Mitchell, Howard, Borden, Dawson, Gaines, Martin, Andrews, Garza, Crosby, Floyd, Brisco, Armstrong, Carson, Hutchinson, Hansford, Sherman, Moore, Potter, Randall, Swisher, Hale, Lubbock, Lynn, Terry, Hockley, Lamb, Castro, Deaf Smith, Oldham, Hartley, Dallam, Palmer, Bayley, Cochran, and Yoakum. Courts of said northern district shall have the same jurisdiction as is conferred by law upon the eastern and western districts of said State. (20 U. S. Stats. 318; 21 U. S. Stats. 10 Rev. Stats. sec. 548; 26 U. S. Stats. 687; 30 U. S. Stats.)

¹ Greer county was transferred to Oklahoma by 29 U. S. Stats. 115.

2 The county of Grayson was detached from the northern and attached to the eastern judicial district. (26 U. S. Stats. 687.)

Eastern district.—From and after the passage of this act, the territory embraced in the following named counties as now constituted shall compose the eastern judicial district, namely: Jackson,¹ Matagorda, Wharton, Brazoria, Fort Bend, Colorado, Austin, Waller, Harris, Galveston, Chambers, Jefferson, Orange, Hardin, Liberty, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Walker, Grimes, Madison, Trinity, Angelina, San Augustine, Sabine, Shelby, Nacogdoches, Cherokee, Houston, Anderson, Henderson, Smith, Rusk, Panola, Harrison, Gregg, Upshur, Wood, Vanzandt, Rains, Hopkins, Camp, Titus, Marion, Cass, Bowie, Franklin, Morris, Red River and Grayson.² (20 U. S. Stats. 318.)

1 Jackson was transferred from the western to the eastern district by 21 U. S. Stats. 10.

2 Grayson was transferred from the northern judicial district by 26 U. S. Stats. 687.

1. *Division of eastern district.*—The counties of Lamar, Fannin, Red River, Delta, and all that part of the Indian Territory attached to the said eastern judicial district by the provisions of this act, shall constitute a division of the eastern judicial district (25 U. S. Stats. 786, sec. 18). That the counties of Jefferson, Orange, Newton, Jasper, Hardin, Liberty, Tyler, San Augustine, Sabine, Polk, and San Jacinto, shall constitute a division of the eastern judicial district of Texas (29 U. S. Stats. 516).

Crimes committed in Indian Territory.—By the act of March 1, 1895, 28 U. S. Stats. 697, such jurisdiction as had formerly been conferred on the United States courts in Arkansas, Kansas and Texas to punish offenses committed in Indian Territory against the laws of the United States was taken away and such jurisdiction was conferred on the courts of the Indian Territory.

Concurrent jurisdiction, Indian Territory.—The United States circuit and district courts for the northern district of Texas, the western district of Arkansas, the district of Kansas, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, concurrent jurisdiction over all controversies arising between said Gulf, Colorado and Santa Fe Railway Company and the nations and tribes through whose territory said railway shall be constructed (23 U. S. Stats. 72.) Said courts shall have like jurisdiction without reference to the amount in controversy over all controversies arising between the inhabitants of said nations or tribes and said railway company; and the civil jurisdiction of said courts is hereby extended within the limits of said Indian Territory without distinction as to citizenship of the parties so far as may be necessary to carry out the provisions of this act. (23 U. S. Stats. 72. Consult 28 U. S. Stats. 697.)

Note.—See *Cherokee Nation v. Southern Kansas R. R. Co.* 135 U. S. 641.

Western district.—From and after the passage of

this act, the territory embraced in the following named counties, as now constituted, shall compose the western judicial district of said State, namely: Calhoun, Victoria, Goliad, Refugio, Bee, San Patricio, Nueces, Cameron, Hidalgo, Starr, Zapata, Duval, Encinal, Webb, La Salle, McMullen, Live Oak, Dewitt, Lavaca, Gonzales, Wilson, Karnes, Atascosa, Frio, Dimmit, Zavala, Maverick, Kinney, Uvalde, Medina, Bexar, Guadalupe, Caldwell, Fayette, Washington, Lee, Burleson, Milan, Williamson, Bastrop, Travis, Hays, Comal, Kendal, Blanco, Burnett, Llano, Gillespie, Kerr, Bandera, Edwards, Kimball, Mason, El Paso, Presidio, Tom Green, Crockett, Pecos, Concho, McCulloch, San Saba, Lampasas and Aransas.¹ (20 U. S. Stats. 318; 30 U. S. Stats.)

¹ Aransas was added by 21 U. S. Stats. 198.

UTAH—*Division of district.*—That for the purpose of holding terms of the district court said district shall be divided into two divisions to be known as the northern and central divisions. The counties of Weber, Davis, Morgan, Rich Cache, and Box Elder shall constitute the northern division, the court for which shall be held at the city of Ogden; and all remaining counties of the said State shall constitute the central division, the court for which shall be held at the city of Salt Lake. (29 U. S. Stats. 620.)

VIRGINIA.—The State of Virginia is divided into two districts, which shall be called the eastern and western districts of Virginia. The western

district includes the counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Floyd, Franklin, Frederick, Fluvanna, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Patrick, Page, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Shenandoah, Tazewell, Washington, Wise, Wythe and Warren. The eastern district includes the residue of said State. (Rev. Stats. sec. 549.)

WASHINGTON—*Division of district.*—For the purpose of holding terms of the district court, said district shall be divided into four divisions, to be known as the eastern, southern, northern and western divisions. (26 U. S. Stats. 45.)

1. *Eastern division.*—The counties of Spokane, Stevens, Okanogan, Douglas, Lincoln, Adams and Kittitas, including any and all Indian reservations in one or more of said counties, shall constitute the eastern division, the court for which shall be held at the city of Spokane Falls. (26 U. S. Stats. 45.)

2. *Southern division.*—The counties of Whitman, Asotin, Garfield, Columbia, Walla Walla, Franklin, Yakima, and Klickitat, including any and all Indian reservations in one or more of said counties, shall constitute the southern division, the court for which shall be held at the city of Walla Walla. (26 U. S. Stats. 45.)

3. *Northern division.*—The counties of Whatcom, Skagit, San Juan Island, Snohomish, Clallam,

Jefferson, Kitsap, and King, including any and all Indian reservations in one or more of said counties shall constitute the northern division, the court for which shall be held at the city of Seattle. (26 U. S. Stats. 45.)

4. *Western division.*—The counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, including any and all Indian reservations in one or more of said counties, shall constitute the western district, the court for which shall be held at the city of Tacoma. (26 U. S. Stats. 45.)

WISCONSIN.—The State of Wisconsin is divided into two districts, which shall be called the eastern and western districts of Wisconsin. The western district includes the counties of Rock, Jefferson, Dane, Green, Grant, Columbia, Iowa, La Fayette, Sauk, Richland, Crawford, Vernon, La Crosse, Monroe, Adams, Juneau, Buffalo, Chippewa, Dunn, Clark, Jackson, Eau Claire, Pepin, Marathon, Wood, Pierce, Polk, Portage, Saint Croix, Trempealeau, Douglas, Barron, Burnett, Ashland, and Bayfield. The eastern district includes the residue of said State. (Rev. Stats. sec. 550.)

§ 17. **Effect of alteration of judicial district on pending actions.**—Transfer of causes.

ALABAMA.—All civil suits and proceedings now pending in the circuit or district courts in said State shall not be effected by this act. (Approved May 2, 1884. 23 U. S. Stats. 18.)

ARKANSAS.—All actions or proceedings now pending against parties residing in either of said counties in the court for the said western district, may, on the application of either party, be transferred to the court for the eastern district at Little Rock; and in case of such transfer, all papers and files therein, with copies of all record entries, shall be transferred to the office of the clerk of such court; and the same shall proceed in all respects as though originally commenced in said court at Little Rock. (24 U. S. Stats. 83.) All crimes and offenses heretofore committed within said western district shall be prosecuted, tried and determined in the same manner and with the same effect as if this act had not been passed. (27 U. S. Stats. 3.) All causes, civil and criminal, now pending in the courts respectively at Little Rock against persons residing in any of the counties made returnable to the courts to be held at Batesville shall be determined and disposed of by said courts, and all causes, civil and criminal, now pending against persons residing in the county of Marion in the courts respectively of Fort Smith, shall be determined and disposed of by said courts. (29 U. S. Stats. 591.)

CALIFORNIA.—All suits and other proceedings of every kind and nature now pending in the circuit or district court of the United States for the district of California shall be tried and disposed of in the circuit and district courts, respectively, for said northern district of California, as the same would have been if this act had not been

passed, and for that purpose, jurisdiction is reserved to said courts in the said northern district of California. (24 U. S. Stats. 308.) Upon application of any party to any suit or proceeding now pending in the present circuit or district court of the present district of California, which would have been commenced in the proper court for the southern district of California if this act had been in force at the time of the commencement thereof, the proper court shall order that the same be removed for further proceedings to the proper court for said southern district, at the cost of the party applying for such removal; and thereupon the clerk shall transmit certified copies of all the papers, and of all orders and records made therein, to the clerk of the court to which such suit or proceedings shall be removed, and all other proceedings shall be had in said court to which the same shall be removed as if said suit or proceeding had originally been commenced therein. (24 U. S. Stats. 308.)

COLORADO.—Actions, suits and proceedings pending and undetermined in the district court for the southern and western divisions, as declared by said act, of which a circuit court has jurisdiction exclusive of the district court, may be certified into the circuit court sitting at the same place, for further proceedings therein and for final hearing or trial thereof. (21 U. S. Stats. 76.)

FLORIDA.—All cases or proceedings pending in the circuit court for the northern district of Florida at Jacksonville, Florida, or filed in the office of the clerk of said circuit court at Jackson-

ville and all records of said court at Jacksonville are hereby transferred to said circuit court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court. And all cases or proceedings pending in the district court for the northern district of Florida, at Jacksonville, Florida, or filed in the office of the clerk of said district court at Jacksonville, and all records of said court at Jacksonville are hereby transferred to said district court for the southern district of Florida, to be proceeded with therein as if originally instituted in said court. (28 U. S. Stats. 117.)

GEORGIA.—Civil actions or proceedings now pending at Savannah in said southern district, which would under this act be brought in the western division of said district, may be transferred, by the consent of all the parties, to said western division; and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the deputy clerk's office at Macon, and the same shall be proceeded with in all respects as though it was originally commenced in the western division. (21 U. S. Stats. 63.) Civil actions or proceedings now pending at Atlanta, in the northern district, in which parties residing in the counties by this act transferred to the southern district are interested, may be transferred, by the consent of all the parties, to the proper courts in the northeastern division of the southern district as herein provided. (25 U. S. Stats. 671.) All civil actions or proceedings now pending either

at Macon or Savannah, in said southern district, in which the parties residing in the counties by this act assigned to said northeastern division are interested, may be transferred, by the consent of all parties, to the proper court in said northeastern division. (25 U. S. Stats. 671.) And in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the clerk's office of the court to which they are transferred, and the same shall be proceeded with in all respects as though the case were originally brought therein; but, without such consent, such actions or proceedings shall be continued and carried on as if the act had not been passed. (25 U. S. Stats. 671.) No suit or prosecution now pending against a citizen or citizens residing in either of said counties, constituting the division hereby created—western division—in either of said courts, at any other place, under the provisions of existing laws, shall be affected by this act, but the same shall be prosecuted and determined as though this act had not been passed. (26 U. S. Stats. 1110.)

IDAHO.—All suits, prosecutions, process, recognizances, bail bonds, and other things pending in or returnable to said court are hereby transferred to and shall be made returnable to and have force in the said respective terms in this act provided in the same manner and with the same effect as they would have had had said existing statute not been passed. (27 U. S. Stats. 73; 30 U. S. Stats. 424.)

ILLINOIS.—All causes and proceedings in law, equity, admiralty, or bankruptcy now pending in

the circuit or district court of the northern district of Illinois, where all the defendants (or the plaintiffs, when the jurisdiction is derived from the residence of the plaintiff or complainants within the district) shall reside in the southern division of said district, shall be transferred to the court of such division, said transfer to be made in vacation or in term-time; if made in vacation, only on the affidavit that all the said parties, plaintiff or defendant, as the case may be, are residents of said southern division, and ten days' notice of the purpose and time of the hearing of said motion; but if made in term-time, then on motion and affidavit only. (24 U. S. Stats. 442.) All civil causes now pending in the United States circuit or district court for the southern district of Illinois, against parties residing in that portion of said district by this act annexed to and incorporated in the said northern district, may remain and be finally disposed of, respectively, in the court in which they are now pending, unless the defendants therein shall desire to have the same transferred to the appropriate division of said court in the district in which they reside, as provided by this act; in which last event such transfer shall be applied for and made to the court for the division of the residence of such defendant in said northern district, or to the court of the southern district, as the case may be, in the manner above provided in the seventh section hereof for the transfer of pending causes from the court of the northern division of said northern district to that of the southern division thereof, *mutatis mutandis*. (24 U. S. Stats.

442.) When a cause shall be transferred as above provided by the seventh and eighth sections hereof, either from the northern division of said northern district to the southern division thereof, or from the southern district of Illinois to the southern division of said northern district, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire files of papers in the cause, and all documents and deposits in his court pertaining thereto, together with a certified transcript of the record of all orders, interlocutory decrees, or other entries in said cause; and he shall also certify, under the seal of the court, that the papers are all which are on file in said court belonging to said cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. (24 U. S. Stats. 442.)

IOWA.—All causes now pending in the courts held in the respective divisions of the State of Iowa shall be continued in the corresponding divisions of the northern or southern districts with the same force and effect as though originally commenced therein. That all prosecutions for crimes or offenses hereafter committed in either of said dis-

tricts shall be cognizable within such district; and all prosecutions for crimes or offenses heretofore committed in the district of Iowa shall be commenced and proceeded with as if this act had not been passed. (22 U. S. Stats. 172.)

KANSAS.—All civil suits and proceedings now pending in the circuit or district court of said district of Kansas, and which would, if instituted after the passage of this act, be required to be brought in the second division of said district, may be transferred, by consent of all the parties, to said second division of said district, and there disposed of in the same manner and with like effect as if the same had been there instituted; and all process, writs and recognizances relating to such suits and proceedings so transferred shall be considered as belonging to the term of the court in the second division of said district, in the same manner and with like effect as if they had been issued or taken in reference thereto originally. (26 U. S. Stats. 129.) All such crimes and offenses heretofore committed within said district shall be prosecuted, tried and determined in the same manner and with the same effect as if this act had not been passed. (27 U. S. Stats. 24.) That in all criminal cases where said courts outside of the Indian Territory shall have on September 1, 1896, acquired jurisdiction, they shall retain jurisdiction to try and finally dispose of such cases. (28 U. S. Stats. 697.)

KENTUCKY.—This act shall not affect the jurisdiction, power and authority of the court as to

actions, prosecutions and proceedings already begun and pending in said district, but the same will proceed as though this act had not been passed, except that the court shall have power, which it may exercise at discretion, to transfer to the court in said division such of pending actions, prosecutions and proceedings as might properly be begun therein under the provisions of this act. (25 U. S. Stats. 389.)

LOUISIANA.—All civil suits in law or equity which have arisen in the parishes composing said western district, or against persons residing therein, or concerning lands situated therein, and now pending, together with all process, writs, recognizances, and records belonging thereto, shall, with the consent of all the parties, be transferred to said western district. (21 U. S. Stats. 507.) And it shall be the duty of the clerks of the district and circuit courts of the United States in New Orleans, whenever the courts shall so order, to transmit, by some safe conveyance, or to deliver to the clerks of the courts in the western district, or their order, the original papers in all such cases as properly belong to the court in the western district by the provisions of this act, together with a transcript of the proceedings had therein. (21 U. S. Stats. 507.)

MICHIGAN.—This act shall not affect or in any wise interfere with causes of action now pending in the circuit or district courts for the eastern district of Michigan, but the same may be proceeded with in the same manner as though this act had not been passed; 28 U. S. Stats. 68; 20 U. S. Stats. 175;

provided, however, that upon cause shown, the circuit and district courts for the eastern district may transfer civil causes arising in that portion of said district detached therefrom by this act to the circuit and district courts for the northern division of the western district of Michigan, provided for in this act. (20 U. S. Stats. 175.)

MISSISSIPPI.—All causes and proceedings in law, equity, or bankruptcy, now pending in the district court of the northern district of Mississippi, where all the defendants (or the plaintiffs, where the jurisdiction is derived from the residence of the plaintiffs within the district) shall reside in the eastern division of said district, shall be transferred to the court of such eastern division of said northern district, said transfer to be made in vacation or in term-time; if made in vacation, only on an affidavit of all the parties defendant that they are resident in said eastern division, and on ten days' notice of the purpose and time of hearing of said motion; but if made in term-time, then on motion and affidavit only. (22 U. S. Stats. 101, sec. 6.) All civil causes now pending in the United States court for the southern district of Mississippi against parties residing in that part of the territory of said southern district by this act annexed to and incorporated in the aforesaid northern judicial district, and that all civil causes now pending in the United States court for the northern district of Mississippi against parties residing in that part of the territory of said northern district by this act annexed to and incorporated in the aforesaid

southern judicial district, may remain and be finally disposed of, respectively, in the courts in which they are now pending, unless the defendants therein shall desire to have the same transferred to the appropriate courts in the district in which they reside, as provided by this act; in which last event such transfer shall be applied for and made to the court for the division of the residence of such defendant in said northern district, or to the court of the said southern district, as the case may be, in the manner above provided in the sixth section hereof for the transfer of pending causes from the court of the western division of said northern district to that of the eastern division thereof, *mutatis mutandis*. (22 U. S. Stats. 101, sec. 8.) In the act of July 18, 1894, changing the southern district, it was provided "that all prosecutions for crimes and offenses heretofore committed shall be commenced and carried on as if this act had not been passed. All civil causes now pending in the circuit or district courts at Jackson, or Aberdeen, or Mississippi City, or Vicksburg, or Oxford, in which a citizen of any county of said eastern division is a defendant, shall remain as they now stand and be tried and determined as if this act had not been passed, unless by consent of all the parties such causes shall be removed to the courts held at Meridian to be tried there." (28 U. S. Stats. 115.)

Duty of clerk on transfer.—When a cause shall be transferred, as above provided by the sixth and eighth sections hereof, either from the western division of said northern district to the eastern divi-

sion thereof, or from the southern district of Mississippi to the appropriate division of the said northern district, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers of the cause, and all documents and deposits in his court pertaining thereto, together with the certified transcript of the record of all orders, interlocutory decrees, or other entries in said cause; and he shall also certify, under seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs and regularly collected with the other costs of the cause; and such transcript, when so certified and received, shall thenceforth constitute a part of the record of the cause in the court to which the transfer shall be made. (22 U. S. Stats. 101, sec. 9.) It shall be the duty of the clerks of the courts now held at Jackson, on demand of either party to any suit now pending in either of said courts, and properly belonging to the court at Vicksburg, to make out and certify a copy of the record and proceedings in such suit, and to transmit the same to the deputy clerk of the proper court at Vicksburg, who shall enter said cause on his docket, and the same shall be proceeded with as if it had been originally brought in said court. The fees for such transcript shall be paid by the party applying for

the same. (24 U. S. Stats. 430, sec. 3.) It shall be the duty of the clerks of the courts now held at Jackson, on demand of either party to any suit now pending in either of said courts, and properly belonging to the court at Mississippi City, to make out and certify a copy of the record and proceedings in such suit, and to transmit the same to the deputy clerk of the proper court at Mississippi City, who shall enter said cause on his docket, and the same shall be proceeded with as if it had been originally brought in said court. The fees for such transcript shall be paid by the party applying for the same. (25 U. S. Stats. 78, sec. 3.)

MISSOURI.—When a cause shall be ordered to be transferred, as above provided, to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers of the cause, and all documents and deposits in his court pertaining thereto, together with a certified transcript of the records of all orders, interlocutory decrees, or other entries in the cause; and he shall also certify, under seal of the court, that the papers sent are all which are on file in said court belonging to the cause, for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as now allowed by law for similar services, to be taxed in the bill of costs and regularly collected with the other costs of the cause; and such transcript, when so certified and received, shall thenceforth constitute a part of the

record of the cause in the court to which the transfer shall be made. (24 U. S. Stats. 424.) Any cause may, by the written consent of both parties or their attorneys of record, be transferred to the court of either division or district, without regard to the residence of the defendants, and whether such cause be now pending or be instituted hereafter. (24 U. S. Stats. 424.) All civil and criminal causes or proceedings pending in the eastern district of Missouri which originated in said county of Audrain shall remain within the jurisdiction of the United States court for said eastern district for final disposition. (25 U. S. Stats. 153; 29 U. S. Stats. 502.) All civil causes and proceedings in law, equity or bankruptcy now pending in any district or circuit court of the United States in the State of Missouri, where all the defendants (or plaintiffs, where the jurisdiction is derived from the residence of the plaintiffs) shall reside in either of the divisions in which courts are hereby established, may, in the discretion of the court, be transferred to the court of the division in which the defendants (or plaintiffs, where the jurisdiction is derived from their residence) reside, and the transfer may be made in vacation or in term-time. If made in vacation, an affidavit of all the parties defendant that they are resident in said division shall be filed, and ten days' notice of the purpose and time of hearing of said motion shall be given the opposite party or his attorney of record; but if made in term-time, then on motion and affidavit only. And the said circuit and district courts for said divisions

shall have the same powers and jurisdiction, with the same right to parties to prosecute appeals and writs of error thereupon, as now pertain to the district and circuit courts for said eastern and western judicial districts. (24 U. S. Stats. 424, sec. 6.) All civil and criminal causes or proceedings pending in the courts of the United States for the northern division of the eastern district of Missouri which originated in said county of Audrain shall remain within the jurisdiction of said courts for that division until finally disposed of, and all offenses committed in said county against the laws of the United States before the passage of this act shall also be cognizable in the United States courts for the northern division of said eastern district until final disposition of the same. (25 U. S. Stats. 153, sec. 2; as amended 25 U. S. Stats. 498.) All civil suits and proceedings now pending in the circuit or district court of said western district of Missouri, and which would, if instituted after the passage of this act, be required to be brought in the western division of said district, may be transferred, by consent of all the parties, to said western division of said district, and there disposed of in the same manner and with like effect as if the same had been there instituted; and all process, writs, and recognizances relating to such suits and proceedings so transferred shall be considered as belonging to the term of the court in the western division of said district, in the same manner and with like effect as if they had been issued or taken in reference thereto originally.

(Approved January 21, 1879. See Rev. Stats. secs. 572, 624, 658; 20 U. S. Stats. 263.) All civil causes now pending in any of the courts in said eastern or western district, or any division thereof, against parties residing in some other division hereby created, may remain and be finally disposed of in the court in which they are now pending, respectively, unless the defendants therein shall desire to have the same transferred to the appropriate court of the division in which they reside, in which last event such transfer shall be applied for to the court of the division in which the cause is pending. (24 U. S. Stats. 424.)

NORTH CAROLINA.—All actions or proceedings now pending against parties residing in the said counties in the courts of said western district may, upon the application of either party, be transferred to the court for the eastern district at Raleigh, and in case of such transfer all papers on file therein with copies of all record entries shall be transferred to the office of the clerk of such court and proceed in all respects as though originally commenced in said court at Raleigh. (28 U. S. Stats. 275.)

OHIO.—Actions or proceedings now pending at Cleveland, in said district, which would under this act be brought in the western division of said district, may be transferred, by consent of all the parties, to said western division: and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the deputy clerk's office at Toledo; and the same shall be

proceeded with in all respects as though it originally commenced in the western division. (20 U. S. Stats. 101.) Actions or proceedings now pending at Cincinnati, in said district, which would under this act be brought in the eastern division of said district, may be transferred, by the consent of all the parties, to said eastern division; and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the deputy clerk's office at Columbus, and the same shall be proceeded with in all respects as though it originally commenced in the eastern division. (21 U. S. Stats. 63; 1 Sup. 508.) All civil and criminal causes or proceedings now pending in the northern district of Ohio, which originated in said county of Logan, shall remain within the jurisdiction of the United States court for said northern judicial district for final disposition. (26 U. S. Stats. 799.)

SOUTH DAKOTA.—All suits, prosecutions, process, recognizances, bail bonds, and other things pending in or returnable to said court on the days now fixed by law are hereby transferred to, and shall be made returnable to and have force in the said respective terms in this act provided in the same manner and with the same effect as they would have had had said existing statute not been passed. (28 U. S. Stats. 6.)

TENNESSEE.—All cases now commenced or depending in said western district, affected by this act, shall be heard, tried, and determined in the same manner as if this act had not been passed;

and the prosecution of all crimes heretofore committed in said western district shall be prosecuted and punished in the same manner as if this act had not been passed. (Approved March 3, 1875. See Rev. Stats. sec. 547; 29 U. S. Stats. 92.) Actions or proceedings now pending at Memphis against defendants residing in said county of Hardeman may, on the application of either party, be transferred to the court at Jackson. (22 U. S. Stats. 402.) That causes now pending in the middle district of Tennessee from Fentress county shall be determined where pending, except in cases where both parties consent to removal. (23 U. S. Stats. 280.)

TEXAS.—Civil actions or proceedings now pending in the court at San Antonio against parties residing in the counties of El Paso, Pecos, Presidio, Tom Green and Crockett, and now pending in the court at Graham against parties residing in the counties of Andrews, Gaines, Yoakum, Cockran, Bailey, Parmer, Castro, Lamb, Hockley, Terry, Dawson, Martin, Swisher, Hale, Lubbock, Lynn, Floyd, Crosby, Garza, Borden, Howard, Scurry and Mitchell, as provided in the act to which this is amendatory, may, on the application of either party to such actions or proceedings, be transferred to the court at the city of El Paso. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.) That all actions or proceedings now pending in the courts of said district against parties residing in either of the counties from which process is made returnable to the courts to be held at Fort Worth,

San Angelo and Abilene, respectively, may, on the application of either party to such actions or proceedings be transferred to the court at which the said proceedings would be returnable as provided in this act. (29 U. S. Stats. 456.) Actions or proceedings now pending at Brownsville, Austin, Galveston and Tyler, which, under this act, would be brought in some other district, may, on application of either party, be transferred to the proper court of said district; and, in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the clerk of such court, and the same shall proceed in all respects as though originally commenced in said court. (20 U. S. Stats. 318.)

Pending causes.—Civil actions or proceedings now pending against parties residing in either of said counties in the courts named in the first and second sections hereof, as provided in the act to which this is an amendment, may, on the application of either party, be transferred to the proper court of said district under this act; and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the clerk of such court; and the same shall proceed in all respects as though originally commenced in said court; and civil actions or proceedings now pending in the circuit courts at Brownsville, Austin, Galveston or Tyler, which under this act would be cognizable in some other district, may, on the application of either party, be transferred to the proper court of said district, and

in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the clerk of such court, and the same shall proceed in all respects as though originally commenced in said court. (21 U. S. Stats. 10, sec. 3.) And in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the deputy clerk of the court at the city of El Paso, and the same shall proceed in all respects as if originally commenced in said court. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.) Nothing contained in this act shall be construed to affect in any manner any action or proceeding now pending in the circuit or district court for the western district of Arkansas, nor the execution of any process relating thereto; nor shall anything in this act be construed to give to said district courts of Kansas and Texas, respectively, any greater jurisdiction in that part of said Indian Territory so as aforesaid annexed, respectively, to said district of Kansas and said northern district of Texas, than might heretofore have been lawfully exercised therein by the western district of Arkansas; nor shall anything in this act contained be construed to violate or impair in any respect any treaty provision whatever. (22 U. S. Stats. 400.) No process issued or prosecution commenced or suit instituted before the passage of this act shall be in any way affected by the provisions thereof. (25 U. S. Stats. 786; 29 U. S. Stats. 516.) All civil and criminal causes or proceedings pending in the

northern district of Texas which originated in said county of Grayson shall remain within the jurisdiction of the United States court for said northern judicial district for final disposition, and all offenses committed in said county against the laws of the United States before the passage of this act shall be cognizable in the United States court for the said northern district until final disposition of the same. (26 U. S. Stats. 687. As to county of Menard, see 30 U. S. Stats. Feb. 2, 1899.)

UTAH.—No action, suit, proceeding, information, indictment, recognizance, bail bond, or other process in either of said courts shall abate or be rendered invalid by reason of the change of time in the holding of the terms of said courts, but the same shall be deemed to be returnable to, pending, and triable at the terms herein provided for. (29 U. S. Stats. 621.)

§ 18 (567). Admission of new States—Transfer of records of territorial courts.—When any Territory is admitted as a State, and a district court is established therein, all the records of the proceedings in the several cases pending in the court of appeals of said Territory, at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court, shall be transferred to and deposited in the district court for the said State. (Rev. Stats. 567. See sec. 704.)

This section applies only to cases which were pending in the territorial courts (*McNulty v. Batty*, 10 How. 72; *Benner v. Porter*, 9 How. 235), and included all cases both criminal and civil. (*Forsyth v. U. S.*, 9 How. 571.) The United States retains power to punish a crime committed against it in one of the territories, though the territory is admitted pending prosecution and before conviction. (*United States v. Baum*, 74 Fed. Rep. 43.) It applies to all cases which were pending in the supreme or superior courts of any territory which may be admitted as a State, at the time of its admission, if on admission the State did not form part of a judicial circuit; but if attached to such a circuit, the transfer is to the circuit court. (*Express Co. v. Kountze*, 8 Wall. 343.) A suit is pending even though one of the defendants has not been served. (*Washington & I. R. Co. v. Coeur D'Alene Ry. & N. Co.*, 15 U. S. App. 359; 60 Fed. Rep. 981); but is not pending where judgment had been given and no steps for obtaining a new trial had been taken within the time allowed by the laws of the territory. (*Glaspell v. Northern Pac. Ry. Co.*, 144 U. S. 211.)

§ 19 (568). Demand for records of territorial court.—It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court; and, in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of said records by attachment or otherwise, according to law. (Rev. Stats. 568.)

IDAHO.—Pending actions, suits, etc., to be transferred on admission of State. (See 26 U. S. Stats. 218.)

Note.—See *Washington & I. R. Co. v. Coeur D'Alene Ry. & N. Co.*, 60 Fed. Rep. 981.

MONTANA.—Pending actions, suits, etc., to be transferred on admission of State. (25 U. S. Stats. 683.)

NORTH DAKOTA.—All suits, prosecutions and processes, recognizances, bail bonds, and other proceedings of whatever nature pending in or returnable to said court on the days last named are hereby transferred to and shall be made returnable to and have force in the said respective terms provided in this act in the same manner and with the same effect as they would have had this act not been passed.¹ (26 U. S. Stats. 67.)

¹ *Washington*, substantially similar. (26 U. S. Stats. 45.)

SOUTH DAKOTA.—Pending actions, suits, etc., to be transferred on admission of State. (See 25 U. S. Stats. 683.)

UTAH.—Pending suits to be transferred on admission of State. (29 U. S. Stats. 111.)

Note.—A cause over which the State and federal courts had concurrent jurisdiction could be transferred to the federal courts even though the defendant's petition for removal was not filed until after defendant was required to plead. (*Fraser v. Grant*, 74 Fed. Rep. 423.)

WYOMING.—Pending actions, suits, etc., to be transferred on admission of State. (See 26 U. S. Stats. 225.)

§ 20. Suits, where brought in States containing several districts.—When a State contains more than one district, every suit not of a local nature in the circuit or district courts thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State. (U. S. Rev. Stats. sec. 740.)

This section applies to suits in equity as well as actions at law (*Winter v. Ludlow*, 3 Phila. 464; Fed. Cas. No. 17891); but has no application where defendant resides as fully in all the districts of the State as in any one of them, as in case of a corporation. (*Locomotive Co. v. Railway Co.*, 10 Blatchf. 292; Fed. Cas. No. 8452.) A bill which fails to give jurisdiction in the district in which the suit is brought is demurrable. (*Harvey v. Richmond & M. Ry. Co.*, 64

Fed. Rep. 19.) If defendant is merely a nominal party, the circuit court of that district has no jurisdiction, and the action must be brought in the district court. (Sackett Harb. Bk. v. Barry, 9 Blatchf. 154; Fed. Cas. No. 12204.) So a stockholder is a nominal party in a suit against the directors to hold them personally liable. (Sackett Harb. Bk. v. Barry, 9 Blatchf. 154; Fed. Cas. No. 12204.)

GEORGIA.—All civil suits not of a local nature must be brought in said northeastern division where the defendant resides in said northeastern division of the southern federal judicial district of Georgia. But if there are two or more defendants, some residing in the northeastern division and others residing in any other portion of said southern district of Georgia, the action may be brought in any one of the divisions in which any one of the defendants resides. When the defendant is a non-resident of either division, action may, if plaintiff is a citizen of the district, be brought in that division wherein the defendant may be found. (25 U. S. Stats. 671.) All suits not of a local nature in the circuit and district courts against a single defendant, inhabitant of said State, must be brought in the division of the district where he resides; but if there are two or more defendants, residing in different divisions of the district, such suits may be brought in either division. All issues of fact in said suits shall be tried at a term of the court held in the division where the suit is so brought. (Approved January 29, 1880; 21 U. S. Stats. 62; 1 Sup. Rev. Stats. sec. 508.)

IDAHO.—All civil suits not of a local character, which shall be brought in the district or circuit courts of the United States for the district of Idaho, in either of the said divisions, against a single defendant, or where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside, or if there are two or more defendants residing in different divisions, such suit may be brought in either division and all mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or all of said divisions. All issues of fact in civil causes triable in any one of the said courts shall be tried in the division where the defendant or one of the defendants reside, unless by consent of both parties the case shall be removed to some other division. (27 U. S. Stats. 73.)

ILLINOIS.—That all civil suits not of a local nature, and criminal prosecutions, must be brought in the division of the said northern district of Illinois where the defendant or defendants reside, or the offense is committed; but if there are two or more defendants in civil suits residing in the different divisions or districts, the action may be brought in either in which either of the defendants may reside. When the defendant is a nonresident of the district, action may be brought in either division of said district wherein the defendant may be found. (24 U. S. Stats. 442.)

IOWA.—All civil suits not of a local nature

which shall hereafter be brought in the circuit or district court of the United States in said district of Iowa must be brought in the division of the district where the defendant or defendants reside; but if there are two or more defendants residing in different divisions, the plaintiff may sue in either one of the divisions in which a defendant resides. All issues of fact triable in either of said courts shall be tried in the division where the defendant, or one of the defendants, resides, unless, by consent of both parties, the case shall be removed to some other division. Where the defendant is a nonresident of the district, suit may be brought in any division where property or the defendant is found. (21 U. S. Stats. 155; 1 Sup. Rev. Stats. 536, sec. 744.) All civil suits not of a local nature must be brought in the division of the northern or southern district where the defendant or defendants reside; but, if there are two or more defendants residing in different divisions, the action may be brought in either of the divisions in which a defendant resides. When the defendant is a nonresident of either district, action may be brought in any division of either district wherein the defendant may be found. (22 U. S. Stats. 176.)

Note.—It is not required that suit be brought in the district where plaintiff resides, in a suit against a nonresident defendant. (*Dinzy v. Illinois Cent. Ry Co.*, 61 Fed. Rep. 49.)

KANSAS.—That all civil suits not of a local character, which shall be hereafter brought in

either of said divisions against a single defendant, or where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside; but if there are two or more defendants residing in different divisions, such suit may be brought in either division. (26 U. S. Stats. 129; 27 U. S. Stats. 24.)

LOUISIANA.—All causes triable in either of the courts of said western district shall be tried in the division to which the process is returnable under the provisions of this act, unless by consent of all parties the cause be removed to some other division of said district. (25 U. S. Stats. 388.) If there be more than one defendant, and they reside in different divisions of the district, the plaintiff may sue in either division, and send duplicate writ or writs to the other defendants; and the said writs, when executed and returned into the court from which they issued, shall constitute the suit and be proceeded in accordingly. (25 U. S. Stats. 388, 438.)

MICHIGAN.—All suits and proceedings hereafter to be brought in the said circuit or district courts not of a local nature shall be brought in a court of the division of the district where the defendant resides; but if there be more than one defendant, and they reside in different divisions of the district, the plaintiff may sue in either division and send duplicate writ or writs to the other defendants, on which the plaintiff or his attorney shall indorse that the writ thus sent is a copy of a

writ sued out of a court of the proper division of the said district; and the said writs, when executed and returned into the office from which they issued, shall constitute one suit, and be proceeded in accordingly. (20 U. S. Stats. 175.) Actions in rem in admiralty may be brought, in whichever division of the eastern district service can be had upon the res. (28 U. S. Stats. 67.) All issues of fact shall be tried at the terms of said courts to be held in the division where such suits shall hereafter be commenced; but nothing herein contained shall prevent the said circuit and district courts from regulating by general rule the venue of transitory actions, either in law or in equity, and from changing the same for cause. (20 U. S. Stats. 176.)

MINNESOTA.—All civil suits not of a local nature must be brought in the division where the defendant or defendants reside; but if there are two or more defendants residing in different divisions, the action may be brought in any division in which a defendant resides. (26 U. S. Stats. 72.)

MISSISSIPPI. — Hereafter all suits to be brought in either of said courts, not of a local nature, shall be brought in the division where the defendants, or either of them, reside; but if there be more than one defendant, and they reside in different divisions, or any of them reside in the southern judicial district of Mississippi, the plaintiff may sue in either division or district, and send duplicate writs to the other division or district, directed to the marshal of the district where he or

they may reside, on which said writs shall be indorsed by the plaintiff, or his attorney, that the same is a duplicate of the original writ sued out of the district court of the proper division or district; but whenever a defendant is sued out of the division of his residence, and is not joined with a co-defendant, whose residence is in the division where the suit is brought, he may, before pleading therein, on motion and on affidavit of the division of his residence, change the venue to the court of the division of his residence, which suit shall stand for trial at the first term of the court to which the venue may be changed; but any cause may, by written consent of both parties or their attorneys of record, be transferred to the court of either division, without regard to the division of the residence of the defendants, and whether such cause be now pending or be instituted hereafter. (22 U. S. Stats. 101.) All laws regulating and defining how suits against persons or property located or found in judicial districts shall be brought shall be applicable to and govern the bringing of such suits at Vicksburg¹ and Mississippi City² in said division. The act of July 18, 1894, provided that if there be more than one defendant in a cause, and the defendants reside in different divisions of said southern district, or any of the defendants reside in the northern district, the plaintiff may sue in either division or district where any defendant resides and send duplicate writs for the other defendant or defendants to the other division or district, where such defendant or defendants reside, and

said writs, when executed and returned into the court from which they issued, shall constitute one suit and be proceeded in accordingly. (28 U. S. Stats. 115.)

1 24 U. S. Stats. 430.

2 25 U. S. Stats. 78.

MISSOURI.—All civil suits not of a local character, which shall be hereafter brought in the district or circuit courts of the United States for the western district of Missouri in either of said divisions, against a single defendant, or where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside; but if there are two or more defendants residing in different divisions, such suit may be brought in either division, and all mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or both of the divisions. (20 U. S. Stats. 263.) All suits to be brought in the courts of the United States in Missouri, not of a local nature, shall be brought in the division having jurisdiction over the county where the defendants, or either of them, reside; but if there be more than one defendant, and a part of them reside in different divisions or districts of said State, the plaintiff may sue in either division of either district where one of such defendants resides, and send duplicate writs to the other division or district directed to the marshal of said district, on which said writs shall be indorsed,

by the plaintiff or his attorney, that the same is a duplicate of the original writ sued out of the court of the proper division and district. (24 U. S. Stats. 424.)

MONTANA.—Causes civil or criminal may be transferred by the court or the judge from Helena to Butte, or from Butte to Helena, in said district, when the convenience of parties or the ends of justice would be promoted by the transfer, and any interlocutory order may be made by the court or judge thereof in either place. (30 U. S. Stats. 685.)

NORTH DAKOTA.—All civil suits not of a local character now pending, or which shall be brought in the district or circuit courts of the United States for the district of North Dakota, in either of the said divisions against a single defendant, or where all the defendants reside in the same divisions of said district, shall be brought in the division in which the defendant or defendants reside, or if there are two or more defendants residing in different divisions, such suit may be brought in either division. (26 U. S. Stats. 67.)

OHIO.—All suits not of a local nature in the circuit or district courts, against a single defendant, inhabitant of such State, must be brought in the division of the district where he resides; but if there are two or more defendants, residing in different divisions of the district, such suits may be brought in either division. All issues of fact in such suits shall be tried at a term of the court held in the division where the suit is so brought.

(Approved June 8, 1878. 20 U. S. Stats. 101. See Rev. Stats. secs. 544, 572, 658; 21 U. S. Stats. 63.)

SOUTH CAROLINA.—*Lucker v. Phoenix Assur. Co.* of London, 66 Fed. Rep. 161; *Barrett v. United States*, 169 U. S. 231.

SOUTH DAKOTA.—That all civil suits not of a local nature must be brought in the division of the district where the defendant or defendants reside; but if there are two or more defendants, residing in different divisions, the action may be brought in either of the divisions in which a defendant resides. (26 U. S. Stats. 14; 28 U. S. Stats. 6.)

TENNESSEE.—All suits not of a local nature in the circuit and district courts, against a single defendant, inhabitant of said State, must be brought in the division of the district where he resides; but if there are two or more defendants, residing in different divisions of the district, such suits may be brought in either division. All issues of fact in said suits shall be tried at a term of the court held in the division where the suit is so brought. (21 U. S. Stats. 175.) All suits not of a local character which shall be hereafter brought in the district or circuit court of the United States for the western district of Tennessee, against a single defendant, or where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside; but if there are two or more defendants residing in different divis-

ions, such suit may be brought in either division, and duplicate writs may be sent to the other defendants. The clerk issuing such duplicate writs shall indorse thereon that it is a true copy of a writ sued out in the proper division of the district, and the original and duplicate writs, when executed and returned into the office from which they shall have issued, shall be proceeded in as one suit, and all issues of fact in such suits shall be tried in the division where the suit is so brought. (20 U. S. Stats. 235; 1 Sup. Rev. Stats. 385.)

TEXAS.—If there be more than one defendant, and they reside in different divisions of the district, the plaintiff may sue in either division, and send duplicate writ or writs to the other defendants, on which the plaintiff or his attorney shall indorse that the writ thus sent is a copy of a writ sued out of a court of the proper division of the said district; and the said writs, when executed and returned to the office from which they issued, shall constitute one suit, and be proceeded in accordingly. (20 U. S. Stats. 318.)

UTAH.—That all civil suits not of a local character, which shall be brought in the district or circuit courts of the United States for the district of Utah, in either of said divisions, against a single defendant, or, where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside, or if there are two or more defendants residing in different divisions, such suit may be brought in either division. (29 U. S. Stats. 620.)

WASHINGTON.—That all civil suits not of a local character, which shall be brought in the district of Washington, in either of the said divisions, against a single defendant, or where all the defendants reside in the same division of said district, shall be brought in the division in which the defendant or defendants reside, or, if there are two or more defendants residing in different divisions, such suit may be brought in either division, and all mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or all of said divisions. All issues of fact in civil causes triable in any of the said courts shall be tried in the division where the defendant or one of the defendants resides, unless by consent of both parties the case shall be removed to some other division. (26 U. S. Stats. 45.)

Note.—A libel in rem is an action of a local character, and must be brought in the division of the district where the res is when the suit is begun. (The Willamette, 53 Fed. Rep. 602.)

§ 21 (732). Suits for penalties and forfeitures. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue, or in the district where the offender is found. (Rev. Stats. sec. 732.)

§ 22 (733). Suits for internal revenue taxes.—Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs,

or in the district where the delinquent resides. (Rev. Stats. sec. 733.)

A suit for taxes cannot be brought in any other district than where the tax accrues, or where the defendant resides. (U. S. v. N. Y. & N. H. R. R. Co., 10 Ben. 144; Fed. Cas. No. 15874.)

§ 23 (734). **Seizures, where cognizable.**—Proceedings on seizures, for forfeiture under any law of the United States, made on the high seas, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided. (Rev. Stats. sec. 734.)

Where a seizure is made on the high seas, jurisdiction attaches in the court of any district into which the property is brought. (The Merino, 9 Wheat. 391; The Abby, 1 Mason, 360; Fed. Cas. No. 14; The Little Ann, 1 Paine, 40; Fed. Cas. No. 8397.) So jurisdiction as to forfeitures is given where the seizure is made. (Keene v. U. S., 5 Cranch, 304; The Ann, 9 Cranch, 289; The Octavia, 1 Gall. 488; Fed. Cas. No. 10422; The Abby, 1 Mason, 360; Fed. Cas. No. 14; The Reindeer, 2 Wall. 383; U. S. v. Barrels, 3 Int. Rev. Rec. 114; Fed. Cas. No. 16502.) A district court has no jurisdiction in rem where the seizure was made in another district. (The Little Ann, 1 Paine, 40; Fed. Cas. No. 8397.)

§ 24 (737). **When a part of several defendants cannot be served.**—When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found

within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district as aforesaid shall not constitute matter of abatement or objection to the suit. (Rev. Stats. sec. 737.)

At law.—On a joint contract, where a citizen sues the State where suit is brought and a citizen of another State, and both are served with process, jurisdiction attaches, and the voluntary appearance of the latter will not deprive the court of jurisdiction (*McCloskey v. Cobb*, 2 Bond. 16; *Fed. Cas. No. 8702*; *Taylor v. Cook*, 2 McLean, 516; *Fed. Cas. No. 13789*); as any of the parties to a joint contract may be sued. (*Clearwater v. Meredith*, 21 How. 489.) So an action lies against one of several executors (*U. S. v. Backus*, 6 McLean, 443; *Fed. Cas. No. 14491*); and so of corporations where some of the corporators are citizens of another State than where the corporation was created. (*Louisville R. Co. v. Letson*, 2 How. 497; but see *Com. & R. Bank v. Slocomb*, 14 Peters. 60.) A creditor may maintain an action against partners some of whom are not residents of the district (*Imbusch v. Farwell*, 1 Black. 566), or an action on a promissory note, although one of the defendants is a citizen of the same State with plaintiff (*Doremas v. Bennet*, 4 McLean, 224; *Fed. Cas. No. 4001*); but if there is no allegation as to the citizenship of one of the defendants the verdict will be set aside, although

he was not served with process. (*Bargh v. Page*, 4 McLean, 10; Fed. Cas. No. 980.)

In equity.—This section is only a legislative affirmance of a previously established rule of equity. (*Shields v. Barrow*, 17 How. 130. Persons having an interest, and who should be made parties, are necessary parties, without whom no decree can be entered. (*Shields v. Barrow*, 17 How. 130; *Northern Ind. R. Co. v. Mich. Cent. R. Co.*, 15 How. 233; *Ribon v. Railroad Cos.*, 16 Wall. 445. See *Winter v. Ludlow*, 3 Phila. 464; Fed. Cas. No. 17891.) Jurisdiction is not defeated by naming a person as one who would have been joined, except that joining him would defeat the jurisdiction. (*Heriot v. Davis*, 2 Wood & M. 229; Fed. Cas. No. 6404; *Vattier v. Hinde*, 7 Peters, 252.)

Necessary parties.—If a bill seeks to hold a surety liable, the principal is a necessary party. (*Robertson v. Carson*, 19 Wall. 94.) So the debtor is a necessary party to a bill brought to aid the enforcement of a judgment. (*Wilson v. City Bank*, 3 Sum. 422; Fed. Cas. No. 17797.) So a corporation is indispensable to a bill by a receiver to have equitable assets applied to the payment of a debt. (*Brigham v. Luddington*, 12 Blatchf. 237; Fed. Cas. No. 1874.) If a party claims an interest in the fund in controversy, he is a necessary party (*Williams v. Bankhead*, 19 Wall. 563); but one who has assigned his interest is not a necessary party. (*Robertson v. Carson*, 19 Wall. 94.) If partners bring an action for a demand due the firm, all the partners are necessary parties. (*Parsons v. Howard*, 2 Woods, 1; Fed. Cas. No. 10777.) The court will not decree a reduction of a license made to three parties jointly on a bill against one alone. (*Florence Sew. Mach. Co. v. Singer Manuf. Co.*, 8 Blatchf. 113; Fed. Cas. No. 14707.) On a bill for enforcement of a mortgage, the mortgagor is a neces-

sary party. (*Robertson v. Carson*, 19 Wall. 94); and on a bill to set aside a sale the vendor is a necessary party. (*Coiron v. Millaudon*, 19 How. 113.) So on a bill to restore the rights of a stockholder, the corporation is a necessary party. (*Kendig v. Dean*, 97 U. S. 423.) So where parties have a joint interest, all are indispensable (*Cameron v. McRoberts*, 3 Wheat. 591); as on a bill in equity which seeks an account of profits and the cancellation of a deed. (*Tobin v. Walkinshaw*, 1 McAll. 26; Fed. Cas. No. 14068.) If a trust fund depends on the result of an account, all the cestuis que trust are necessary parties. (*Greene v. Sisson*, 2 Curt. 171; Fed. Cas. No. 5768.) On a bill to enforce a trust the debtor's assignee in bankruptcy is a necessary party. (*Russell v. Clark*, 7 Cranch, 69.) So if an heir files a bill charging defendant with trust property and prays an account, the personal representative of the ancestor is a necessary party. (*West v. Randall*, 2 Mason, 181; Fed. Cas. No. 17424.) A party who files a bill to enforce a deed of trust after an assignment of the equity of redemption cannot obtain a decree in the absence of a judgment creditor who has bought the property under an execution sale. (*Young v. Cushing*, 4 Biss. 456; Fed. Cas. No. 18156.) So on a bill for an account or partition, the court must have jurisdiction over all the defendants. (*Barney v. Baltimore*, 6 Wall. 280.) A decree cannot be made in the absence of an indispensable party. (*Parsons v. Howard*, 2 Woods, 1; Fed. Cas. No. 10777.)

Parties not necessary.—On a bill to enforce a mortgage given to trustees where a majority of the trustees are parties, the other trustee is not necessary. (*Stewart v. Chesapeake & O. Can. Co.* 1 Fed. 361; 4 Hughes, 41.) So if some of the holders of bonds secured by mortgage are citizens of another State, they

are not necessary parties to the foreclosure of the mortgage. (*Hotel Co. v. Wade*, 97 U. S. 13.) If the assignee of a chose in action files a bill to enforce it, the assignor is not a necessary party. (*Batesville Inst. v. Kauffman*, 18 Wall. 151.) An heir claiming an undivided surplus in the hands of a trustee need not make the other heirs parties. (*West v. Randall*, 2 Mason, 181; *Fed. Cas. No. 17424*.) On breach of trust all are severally as well as jointly liable. (*Parsons v. Howard*, 2 Woods, 1; *Fed. Cas. No. 10777*.) A distributee of an estate may maintain an action to recover his share without the other distributees being parties. (*Payne v. Hook*, 7 Wall. 125.) A creditor may maintain a bill against a legatee, although the personal representative of the debtor living in another State is not made a party. (*Milligan v. Milledge*, 3 Cranch, 220.) If the bill alleges fraud in the purchase of goods, the trustee in insolvency of the vendee is not a necessary party. (*Heriot v. Davis*, 2 Wood & M. 229; *Fed. Cas. No. 6404*.) A party selling by contract an equitable title, and subsequently claims that it has become void, a decree for its surrender need not make the holder of the legal title a party to it. (*Boone v. Chiles*, 8 Peters, 532.) Where both parties claiming title under a third party who has no interest left, a decree can be obtained although he is not a party to the suit. (*Vattier v. Hinde*, 7 Peters, 252.) A bill may be filed against the collector, auditor, and treasurer without joining the State in case of an illegal tax levy. (*Osborn v. Bank*, 9 Wheat. 738.) Jurisdiction is not defeated by the voluntary appearance of a nonresident defendant in a suit instituted by a nonresident. (*Pond v. Vermont Val. R. Co.*, 12 Blatchf. 280; *Fed. Cas. No. 11265*; *Jones v. Andrews*, 10 Wall. 327; *Russell v. Clark*, 7 Cranch, 69.) Tenants in common with complainant who appear to be entitled to a specially described

portion of the premises, and which does not interfere with the part occupied by defendant, jurisdiction attaches. (*Elmendorf v. Taylor*, 10 Wheat. 152.) A prior encumbrancer not subject to the jurisdiction of the court, and who cannot be joined without defeating the jurisdiction, is not a necessary party. (*Hagan v. Walker*, 14 How. 29.) A trustee willing to transfer the stock to the cestui que trust in a bill to compel a transfer by the corporation. (*Mechanics' Bank v. Seton*, 1 Peters, 299.) If the defendant has a distinct interest, and substantial justice can be done, jurisdiction attaches as to him alone. (*Cameron v. McRoberts*, 3 Wheat. 591; *Nesmith v. Calvert*, 1 Wood & M. 34; *Fed. Cas. No. 10123*.) If parties are not essential to the litigation, or such over whom the court has no jurisdiction, they may be stricken from the bill, and the cause proceed as to the rest (*Carneal v. Banks*, 10 Wheat. 181; *Vattier v. Hinde*, 7 Peters, 252); but if all the defendants are served with process or voluntarily appear, the decree will bind all. (*Ober v. Gallagher*, 93 U. S. 199.) The mere knowledge of the pendency of the suit and employment of counsel are not sufficient. (*McPike v. Wells*, 54 Miss. 136.) A decree of the circuit court will not affect the interest of a person who is not made a party to the suit. (*McPike v. Wells*, 54 Miss. 136.) If the court cannot bring in the necessary parties, it may retain the cause till complainant has an opportunity to sue in some other court (*Mallow v. Hinde*, 12 Wheat. 193) but if a defendant has a severable interest, the bill should be dismissed as to him. (*Horn v. Lockhart*, 17 Wall. 570.) If some of the heirs cannot be brought before the court, the undivided interest of those who do appear may be sold, and the lien of the grantee remain on the part unsold. (*Harding v. Handy*, 11 Wheat. 103.)

§ 25 (738). **Absent defendants, how served.**— That when in any suit, commenced in any circuit court of the United States, to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court in his discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards

such absent defendant or defendants, without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district. And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State; provided, however, "that any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said circuit court, and thereupon the said court shall make an order setting aside the judgment therein, and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law. (18 U. S. Stats. 472; 1 Sup. Rev. Stats. 176; Rev. Stats. sec. 738.)

Service by Publication.—When service of process is by publication, a strict compliance with the statutory provisions is required. (Cheeley v. Clayton, 110 U. S. 701; Meyer v. Kuhns, 25 U. S. App. 174; 65 Fed. Rep. 705; Bracken v. Union Pac. Ry. Co., 12 U. S. App. 421; 56 Fed. Rep. 447.) The mode provided in the above section is exclusive of any other mode. (Bracken v. Union Pac. Ry. Co., 12 U. S. App. 421; 56 Fed. Rep. 447.) Service upon a nonresident by publication prior to attachment of his property is a nullity, and is not made good by a subsequent attachment. (Baumgardner v. Bono Fertilizer Co., 58 Fed. Rep. 1.)

Application of Statute.—This section does not apply to a suit by an assignee in bankruptcy to recover assets from a stranger, but to suits in equity to enforce some pre-existing lien. (*Shainwald v. Lewis*, 5 Fed. Rep. 510; S. C. 6 Saw. 585.) The provisions of this section apply to suits instituted prior to its passage. (*McBurney v. Carson*, 99 U. S. 567.) It recognizes the superiority of personal service over constructive service (*Bronson v. Keokuk*, 2 Dill. 498, Fed. Cas. No. 1928); and whether personal service is practicable may be ascertained from the affidavit of the party, or his attorney or agent. (*Bronson v. Keokuk*, 2 Dill. 498, Fed. Cas. No. 1928.) This section simply allows substituted service in certain cases where the court has jurisdiction and does not purport to change or modify the law as to jurisdiction. (*Tug River Coal and Salt Co. v. Brigel*, 31 U. S. App. 663; 67 Fed. Rep. 625. If it appears that the absent defendant resides in another district, service may be made by the marshal of that district, and a special order may direct service by some other officer. (*Bronson v. Keokuk*, 2 Dill. 498; Fed. Cas. No. 1928.) Personal service must be made in all cases where the residence of defendant is known. (*Bronson v. Keokuk*, 2 Dill. 498; Fed. Cas. No. 1928.) An action of ejectment may be maintained in the district where the land is situated even though it is not the district of the residence of either plaintiff or defendant (*Spencer v. Kansas City Stockyard Co.*, 56 Fed. Rep. 741), and the same is true of a suit to foreclose a mortgage (*Kuhn v. Morrison*, 75 Fed. Rep. 81), as well as a suit to quiet title (*United States v. S. P. Ry. Co.*, 63 Fed. Rep. 481), and a suit for specific performance of an agreement to convey land. (*Single v. Scott Paper Mfg. Co.*, 55 Fed. Rep. 553.) If the owner of stock lives in another district the stock follows the person (*Kilgour v. New*

Orleans Gas. L. Co., 2 Woods, 144; Fed. Cas. No. 7764); and stock not designated or ascertained is a mere chose in action. (Kilgour v. New Orleans Gas L. Co., 2 Woods, 144; Fed. Cas. No. 7764.) If a bill is filed to reach a debtor's assets, the debtor may be made a party by order of publication (Brigham v. Ludington, 12 Blatchf. 237; Fed. Cas. No. 184; and the order will not be granted if complainant and the party to be brought in are both citizens of the same State. (Brigham v. Ludington, 12 Blatchf. 237; Fed. Cas. No. 1874.) Jurisdiction of nonresident stockholder of a resident corporation cannot be acquired by publication, in a suit by a resident claiming the equitable title to the stock. (Jellenik v. Huron Copper Min. Co., 82 Fed. Rep. 778.) Adequate remedy at law means any form of remedy at law. (LaMothe v. Fink, 8 Biss. 493; Fed. Cas. No. 8032.) A Federal Court may entertain jurisdiction of a creditor's bill, although parties in the suit may be compelled to testify under an act of Congress (Frazer v. Colorado D. & S. Co., 2 McCrary, 11); and although the Code of the State gives special proceedings to subject the property to execution. (Frazer v. Colorado D. & S. Co., 2 McCrary, 11.) The same property cannot be subject to two jurisdictions at the same time, and the first levy withdraws the property from the reach of another court. (Domestic & For. Miss. Soc. v. Hinman, 2 McCrary, 543; 13 Fed. Rep. 106.) A corporation having a place of business in the district where suit is brought, and having an agent in charge, may be sued in that district. (Spencer v. Kansas City Stockyards Co., 56 Fed. Rep. 741.) If a defendant voluntarily files an answer, the court acquires jurisdiction over him. (Turner v. Indianapolis etc. R. Co., 8 Biss. 380; Fed. Cas. No. 14259.) This section corresponds to section 8 of Act of March 3, 1875, which is expressly saved by the Act of 1887. Under the last mentioned act,

a suit by a citizen of Ohio against citizens of Vermont, New York and Maine, to enforce a claim to property in Vermont, is properly brought in the district of Vermont. (*Carpenter v. Talbot*, 33 Fed. Rep. 537.) This section applies to suits in equity under United States Revised Statutes, section 4915, to procure the issue of letters patent for an invention, after rejection of the application therefor. (*Butterworth v. Hill*, 114 U. S. 128.) Service may be had upon an absent defendant under this section when the suit is brought to cancel for fraud a deed of lands situated within the district. (*Evans v. Charles Scribner's Sons*, 58 Fed. Rep. 303.)

“Warning Order.”—To procure the special order of service or “warning order,” authorized by the above section, for service on absentees or nonresidents in the special class of suits therein mentioned, it is not necessary in all cases to lay a foundation therefor by first issuing subpoenas or by making an order requiring defendants to appear before a certain date. If the bill itself shows that they are absent or nonresident, and cannot be served within the district, such subpoena or order is useless or nugatory, and the “warning order” may be procured at once and as the first process. (*United States v. American Lumber Co.*, 80 Fed. Rep. 309; but see *Bronson v. Keokuk*, 2 Dill. 498; Fed. Cas. No. 1929.)

§ 26. Suits, in what district brought.—Generally, no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court. And no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only

on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or defendant. (25 U. S. Stats. 434.)

See notes to section 87 and 87 a, post.

Application of statute.—This section does not apply to Territorial courts (*Salisbury v. Sands*, 2 Dill. 270; Fed. Cas. No. 12251.) It applies to cases whereof the Federal and State courts have concurrent jurisdiction, but does not apply to cases arising under special acts conferring exclusive jurisdiction on Federal courts where such Acts were passed prior to the passage of the above section (*Van Patten v. Chicago M. & St. P. R. R. Co.*, 74 Fed. Rep. 981.) Its provisions apply to process in equity as well as at law (*Winter v. Ludlow*, 3 Phila. 464; Fed. Cas. No. 17891); as on a bill filed to set aside a foreclosure sale (*Pac. R. R. & M. P. Ry. Co.*, 3 Fed. Rep. 772; 1 McCrary, 647). It does not apply to an alien or foreign corporation; such person or corporation may be sued by a citizen of a State in any district in which valid service can be made. (*Re Hohorst*, 150 U. S. 653; *Barrow Steamship Co. v. Kane*, 170 U. S. 100.) Neither does it apply to suits under the interstate commerce Act; such suits may be brought wherever defendant may be found (*Van Patten v. Chicago M. & St. P. Ry. Co.*, 74 Fed. Rep. 981). It applies exclusively to original process (*Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134.) It inhibits the suing of any person in any other district than the district in which he resides. (*Lovejoy v. Hartford Fire Ins. Co.*, 11 Fed. Rep. 64.) A bill to obtain relief against a judgment is deemed an auxiliary suit, and the subpoena may be served in another district (*Logan v. Patrick*, 5 Cranch, 288;

Dunlap v. Stetson, 4 Mason, 349; Fed. Cas. 4164); and if plaintiff is nonresident, it may be served on plaintiff's attorney (Dunn v. Clarke, 8 Peters, 1; Segee v. Thomas, 3 Blatchf. 11; Fed. Cas. No. 12633; Hitner v. Suckley, 2 Wash. C. C. 465; Fed. Cas. No. 6543; Read v. Consequa, 4 Wash. 174; Fed. Cas. No. 11606; Eckert v. Bauert, 4 Wash. C. C. 370; Fed. Cas. No. 4266; Ward v. Seabry, 4 Wash. 426; Fed. Cas. No. 17161.) A resident of one State who is temporarily in charge of an exhibit in another State is an inhabitant of the former State. (Bicycle Stepladder Co. v. Gordon, 57 Fed. Rep. 529.)

Territorial limit of jurisdiction.—A court created within and for a particular Territory is bounded in the exercise of its power by the limits of such Territory. (Picquet v. Swan, 5 Mason, 35; Fed. Cas. No. 11134; Ex parte Graham, 3 Wash. C. C. 456; Fed. Cas. No. 5657.) Whatever may be the extent of the jurisdiction over the subject-matter in a suit in respect to jurisdiction over persons and property, it can only be exercised within the limits of the judicial district. (Toland v. Sprague, 12 Peters, 300; Picquet v. Swan, 5 Mason, 35; Fed. Cas. No. 11134.) One having his business in a federal judicial district and living therein for six months in each year, in his own house is a resident of the district (King v. United States, 59 Fed. Rep. 9). Where a citizen of New Hampshire and a citizen of Georgia sued a citizen of Massachusetts in New York, where he was arrested, the court had no jurisdiction. (Moffat v. Soley, 2 Paine, 103; Fed. Cas. No. 9688.) A court has no jurisdiction of a suit brought by residents of other districts than that for which the court sits, against several defendants, only one of whom is a resident of that district. (Excelsior Phosphate Co. v. Brown, 42 U. S. App. 55; 74 Fed. Rep. 321.)

Where there are two districts in a State, a citizen of such State is liable to suit in either district, if served with process. (McMicken v. Webb, 11 Peters, 25; Vore v. Fowler, 2 Bond. 249; Fed. Cas. No. 17003; Locomotive Co. v. Erie R. Co., 10 Blatchf. 294; Fed. Cas. No. 8453.)

Jurisdiction, how acquired.—A Federal court acquires jurisdiction over parties only by a service of process or by their voluntary appearance (Herndon v. Ridgway, 17 How. 424), and only by service of process within the district (Allen v. Blunt, 1 Blatchf. 480; Fed. Cas. No. 215; Union Sugar Refl. v. Matthiessen, 2 Cliff. 304; Fed. Cas. No. 14397; United States v. American Lumber Co., 56 U. S. App. 655; 85 Fed. 827), and not then if he is but temporarily within the district. (Smith v. Tuttle, 5 Biss. 159.) The issuance of a subpoena to be served outside the Territorial jurisdiction is a mere nullity for all purposes. (United States v. American Lumber Co., 56 U. S. App. 655; 85 Fed. 827.) A person who comes within the district merely for the purpose of attending a trial in a State court cannot be served with process issuing out of a United States court (Junoau Bank v. Mcspedan, 5 Biss. 64; Fed. Cas. No. 7582); and if served with summons while attending the trial of a cause in the circuit court as a party, the service will be set aside. (Parker v. Hotchkiss, 1 Wall. Jr. 267; Fed. Cas. No. 10739; *contra*, Blight v. Fisher, Peters, C. C. 41; Fed. Cas. No. 1542.) Where defendant, not an inhabitant of the district, is inveigled or enticed into the district by false representations or deceptive contrivances, service of process on him within the district is illegal. (Steiger v. Bonn, 4 Fed. Rep. 17; Union Sugar Refl. v. Matthiessen, 2 Cliff. 304; Fed. Cas. No. 14397.) If a non-resident comes into the district for the purpose of

pleading to an indictment and giving bail, he cannot be sued before he has a reasonable time to depart. (*U. S. v. Bridgman*, 9 Biss. 221; *Fed. Cas. No. 14645*.) If defendant is a nonresident of the district, the record must show with certainty that process was served upon him within the district. (*Allen v. Blunt*, 1 Blatchf. 480; *Fed. Cas. No. 215*; *Vore v. Fowler*, 2 Bond, 294; *Fed. Cas. No. 17003*; *McCloskey v. Cobb*, 2 Bond, 16; *Fed. Cas. No. 8702*; *Thayer v. Wales*, 5 Fish. 448; *Fed. Cas. No. 13872*.)

A personal privilege, and may be waived.—This section is not a denial of jurisdiction, but the grant of a privilege to defendant not to be sued out of the State where he resides, unless served with process in the State where suit is brought (*Harrison v. Rowan*, Peters C. C. 489; *Fed. Cas. No. 6140*); and under its provisions the privilege granted to him may be waived (*Flanders v. Aetna Ins. Co.*, 3 Mason, 158; *Fed. Cas. No. 4852*; see *Lovejoy v. Hartford F. Ins. Co.*, 11 *Fed. Rep.* 63; *Smith v. Atchison T. & S. F. Ry. Co.*, 64 *Fed. Rep.* 1), as by a voluntary appearance (*Harrison v. Rowan*, Peters, C. C. 489; *Fed. Cas. No. 6140*; *Hale v. Contin. Ins. Co.*, 12 *Fed. Rep.* 359; *Hatch v. Ferguson*, 57 *Fed. Rep.* 966; *The Wilamette*, 44 *U. S. App.* 26; 70 *Fed. Rep.* 874; *Walker v. Windsor Nat. Bank*, 5 *U. S. App.* 423; 56 *Fed. Rep.* 76; *Noonan v. Delaware*, 68 *Fed. Rep.* 1; *Interior Const. Imp. Co. v. Gibney*, 160 *U. S.* 217; *Central Trust Co. v. McGeorge*, 151 *U. S.* 129; *Hoover & A. v. Columbia Straw Paper Co.*, 68 *Fed. Rep.* 945), or by filing of petition to remove (*Baltimore & Ohio R. R. Co. v. Meyers*, 18 *U. S. App.* 569; 62 *Fed. Rep.* 367); and his appearance without process is a waiver of the privilege to object to the non-service of process. (*Gracie v. Palmer*, 8 *Wheaton*, 699; *Segee v. Thomas*, 3 *Blatchf.* 11; *Fed. Cas. No. 12633*; *Kelsey v. Penn. R. Co.*, 14 *Blatchf.* 89; *Fed.*

Cas. No. 7679; McCloskey v. Cobb, 2 Bond, 16; Fed. Cas. No. 8702; Flanders v. Aetna Ins. Co., 3 Mason, 158; Fed. Cas. No. 4852; Harrison v. Rowan, Peters, C. C. 499; Fed. Cas. No. 6140; Clarke v. Navigation Co., 1 Story, 531; Fed. Cas. No. 2859; Southern Exp. Co. v. Todd, 12 U. S. App. 351; 56 Fed. Rep. 104; Von Auw v. Chicago Toy & Fancy Goods Co., 69 Fed. Rep. 448.) If defendant who is a nonresident, should waive his personal privilege and appear, a service of the subpoena upon him must be set aside on his motion, but the subpoena itself will not be set aside. (Mason v. New York Steam Power, 87 Fed. Rep. 241.) So appearing and moving to dismiss the bill for want of equity (Jones v. Andrews, 10 Wall. 327), or an appearance unaccompanied by a plea claiming the privilege, is a waiver of it. (Harrison v. Rowan, Peters, C. C. 489; Fed. Cas. No. 6140.) For an appearance to confer jurisdiction, the party must be a party to the record. (Kentuck, S. M. Co. v. Day, 2 Sawy. 468; Fed. Cas. No. 7719.) If a party is a nonresident he may appear in the suit and plead his personal privilege (Teese v. Phelps, 1 McAll. 17; Fed. Cas. No. 13818), and such an appearance is not a waiver (Harrison v. Rowan, Peters C. C. 489; Fed. Cas. No. 6140; American Cereal Co. v. Eli Pettijohn Cereal Co., 70 Fed. Rep. 276); but it is not a waiver to appear and plead to the jurisdiction by an attorney. (Commercial Bank v. Slocomb, 14 Peters, 60; Thayer v. Wales, 5 Fish. 448; Fed. Cas. No. 13872; Decker v. New York B. & P. Co., 11 Blatchf. 76; Fed. Cas. No. 3727.) The filing of a general appearance in a Federal court in an action commenced by service of summons alone, is no waiver of defendant's right to move to dismiss for want of jurisdiction, when on the subsequent service of the complaint it appears for the first time that the only ground of Federal jurisdiction is diverse citizenship,

and that the action is brought in the wrong district. (*Crown Cotton Mills v. Turner*, 82 Fed. Rep. 337.) Where a bill was filed in the southern district of Mississippi against four defendants, two of whom appeared for the purpose of moving to dismiss the bill and the other two declined to appear and process was not served on them, the court had no alternative but to dismiss the bill, they being necessary parties. (*Herndon v. Ridgway*, 17 How. 424.)

Waiver of irregularities.—A Federal court has no authority to issue process to another district. (*Herndon v. Ridgway*, 17 How. 424.) So the process of a circuit court cannot be served without the district in which it is established except by special authority of law. (*Toland v. Sprague*, 12 Peters, 300; *Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. No. 5657; *Wilson v. Graham*, 4 Wash. C. C. 53; Fed. Cas. No. 17804.) In proceedings for relief against an interfering patent under section four thousand nine hundred and eighteen, Revised Statutes, no provision is made for service of notice on parties outside of the district. (*Liggett v. Miller*, 1 Fed. Rep. 203; 1 McCrary, 31.) No judgment can be rendered against a defendant who has not been served with process in the manner pointed out, unless the defendant waives the necessary process by entering his appearance (*Levy v. Fitzpatrick*, 15 Peters, 167). A party defendant may plead service of process on him out of the district by plea in abatement of the suit. (*Van Antwerp v. Hulburt*, 7 Blatchf. 426; Fed. Cas. No. 16826.) Where defendant appeared generally and demurred for want of jurisdiction it was held that his appearance was a waiver of his right to object that the action was brought in the wrong district, and the question was not raised by demurrer. (*Noonan v. Delaware L. & W. R. Co.*, 68 Fed. Rep. 1.) A special appearance for the purpose of

moving to quash the return of summons is not a waiver. (*American Cereal Co. v. Eli Pettijohn Cereal Co.*, 70 Fed. Rep. 276.) Where a defendant appears without taking exceptions it is an admission of the regularity of the service (*Grace v. Palmer*, 8 Wheat. 699); but if he appears and answers the bill, he cannot on the hearing object that the bill contained a prayer for process, or that he was not served. (*Segee v. Thomas*, 3 Blatchf. 11; Fed. Cas. No. 12633.) And if he appears and pleads on the merits, it is a waiver of irregularity. (*Toland v. Sprague*, 12 Peters, 300; *Pollard v. Dwight*, 4 Cranch, 422; *Irvine v. Lowry*, 14 Peters, 293.) The objection that the suit was not brought in the district of the residence of either party cannot be raised for the first time on appeal (*Western Union Beef Co. v. Thurman*, 30 U. S. App. 516; 70 Fed. Rep. 960; *Carter-Crume Co. v. Peurrung*, U. S. App.; 86 Fed. Rep. 439); nor for the first time on a motion in arrest of judgment (*Southern Exp. Co. v. Todd*, 12 U. S. App. 351; 56 Fed. Rep. 104); nor after a plea in bar (*Texas & Pac. Ry. Co. v. Saunders*, 151 U. S. 105.)

Corporations.—A corporation can have no existence beyond the limits of the State in which it is created; hence service of process upon its officers in another State will not confer jurisdiction upon a circuit court in that State over the corporation. (*Northern Ind. R. Co. v. Michigan Cent. R. Co.*, 15 How. 233; *Day v. Newmark Manuf. Co.*, 1 Blatchf. 628; Fed. Cas. No. 3685; *Decker v. New York B. & P. Co.*, 11 Blatchf. 76; Fed. Cas. No. 3727; *Myers v. Dorr*, 13 Blatchf. 22; Fed. Cas. No. 9988); especially when the officers are only temporarily within the district (*Goldey v. Morning News*, 156 U. S. 518; *Rust v. United Waterworks Co.*, 36 U. S. App. 167; 70 Fed. Rep. 129). A corporation cannot be compelled to answer in a suit

in a district in which neither plaintiff nor defendant is an inhabitant (*Re Keasbey & Mattison Co.*, 160 U. S. 22). Nor be compelled to obey an order of a court of another State. (*Averill v. Southern Ry. Co.*, 75 Fed. Rep. 736.) As a corporation cannot be made a party to a civil suit by original process in any other district than the State wherein it was created (*Myers v. Dorr*, 13 Blatchf. 23; Fed. Cas. No. 9988), so a national bank cannot be sued out of the district in which it is located (*Maine v. Second Nat. Bank*, 6 Biss. 26; Fed. Cas. No. 8976); but a trading corporation may be sued in any district in which it conducts its business (*Hayden v. Androscoggin Mills*, 1 Fed. Rep. 93), and a foreign corporation may be sued in a district other than that of which it is a resident, if it has a duly authorized resident agent qualified to acknowledge service of process (*Runkle v. Lamar Ins. Co.*, 2 Fed. Rep. 9; *Moch v. V. F. & M. Ins. Co.*, 10 Fed. Rep. 696); or if it consents that process may be served on its agent in such State, jurisdiction attaches. (*Ex parte Schollenberger*, 96 U. S. 369; *Knott v. Southern L. Ins. Co.*, 2 Woods, 479; Fed. Cas. No. 7894; *Ehrman v. Teutonia Ins. Co.*, 1 Fed. Rep. 471; *Runkle v. Lamar Ins. Co.*, 2 Fed. Rep. 9; *Fonda v. British Am. Ins. Co.*, Fed. Cas. No. 4904; *Albright v. Empire Trans. Co.*, 18 Alb. L. J. 313; Fed. Cas. No. 17720; contra, *Pomeroy v. New York etc. Ry. Co.*, 4 Blatchf. 120; Fed. Cas. No. 11261; *Southern & A. T. Ry. Co. v. New Orleans M. & T. R. Co.*, 2 Cent. L. J. 88; Fed. Cas. No. 13185; *Stillwell v. Empire F. Ins. Co.*, 4 Cent. L. J. 463; Fed. Cas. No. 13449.) A foreign corporation doing business within the State is liable to suit by service of process on an agent (*Albright v. Empire Trans. Co.*, 18 Alb. L. J. 313; Fed. Cas. No. 17720. See *Moch v. V. F. & M. Ins. Co.*, 10 Fed. Rep. 696. and *Rowbotham v. George P. Steele Iron Co.*, 71 Fed.

Rep. 758), although there is no State law requiring it to appoint an agent to accept service of process (*Wilson Pack Co. v. Hunter*, 8 Biss. 429; *Fed. Cas. No. 17852*). Under the judiciary act of 1888, a corporation, incorporated in one State of the Union and having a usual place of business in another State in which it has not been incorporated, cannot be sued in a circuit court of the United States held in the latter State by a citizen of a different State. (*Ex parte Shaw*, 145 U. S. 444.) A foreign corporation or alien may be sued in any district in which valid service may be made. (*Re Hohorst*, 150 U. S. 653; *Barrow Steamship Co. v. Kane*, 170 U. S. 100; but see *Re Keasbey & Mattison Co.*, 160 U. S. 221.) Courts having jurisdiction to enforce their decrees in a State where a corporation has its home office should be resorted to in all cases where it is necessary to inquire into and regulate the internal affairs of a corporation. (*Leary v. Columbia River & P. S. Nav. Co.*, 82 Fed. Rep. 775.) Where the jurisdiction depends upon diverse citizenship the court of the residence of stockholders of an insolvent corporation organized under the laws of another State has no jurisdiction of a suit brought by a creditor for an accounting and receivership, and to enforce the individual liability of the stockholders, if the corporation has not voluntarily appeared (*Elkhart Nat. Bank v. Northwestern Guaranty Loan Co.*, 84 Fed. Rep. 76.)

Process by attachment.—An attachment against the property of a nonresident cannot be sued out, unless the defendant is first personally served with process (*Ex parte Des Moines R. R. Co.*, 2 Morr. Trans. 303); or unless he appears (*Central Trust Co. v. Chattanooga R. & C. R. Co.*, 68 Fed. Rep. 685). The circuit court has no jurisdiction in attachment

suits against a nonresident without the district. *Hollingsworth v. Adams*, 2 Dall. 396; *Toland v. Sprague*, 12 Peters, 300; *Chaffee v. Hayward*, 20 How. 208; *Day v. Newark Manuf. Co.*, 1 Blatchf. 628; Fed. Cas. No. 3685; *Sadler v. Hudson*, 2 Curt. 6; Fed. Cas. No. 12206; *Mauldin v. Carll*, 3 Hughes, 247; Fed. Cas. No. 9307; *Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134; *Richmond v. Dreyfous*, 1 Sum. 131; Fed. Cas. No. 11799.) Process of foreign attachment cannot be properly issued by the circuit court in cases where defendant is domiciled abroad or not found within the district, where it can be served upon him (*Toland v. Sprague*, 12 Peters, 300; *Anderson v. Shaffer*, 10 Fed. Rep. 266), and this applies to corporations. (*Meyers v. Dorr*, 13 Blatchf. 22; Fed. Cas. No. 9988.) Process of attachment on the effects of a person not an inhabitant cannot be served (*Pollard v. Dwight*, 4 Cranch. 424); but if served not only on the property, but on the defendant, jurisdiction attaches. (*North v. McDonald*, 1 Biss. 57; Fed. Cas. No. 10312; *Vermilya v. Brown*, 65 Fed. Rep. 149.) And assignee appointed by a bankrupt court of another district is within the rule, although there is property within the district (*Shainwald v. Lewis*, 5 Fed. Rep. 510; S. C. 6 Sawy. 585). Where a citizen of the United States is a resident in a foreign country, the circuit court has no jurisdiction over a suit brought by an alien, although he has property within the district which may be attached. (*Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134.) The jurisdiction of the court in attachment proceedings depends not upon the situs of the debt but upon the control obtained over defendant by due process, duly served. (*Mooney v. Burford & George Mfg. Co.*, 34 U. S. App. 581; 72 Fed. Rep. 32.) Property cannot be made subject to garnishment unless it is within the jurisdiction. (Central

Trust Co. v. Chattanooga R. & C. R., 68 Fed. Rep. 685.)

Civil suit.—"Civil suit" means a suit within the category of "all suits of a civil nature at common law or in equity," and a cause of admiralty jurisdiction is not within the meaning of this prohibition. (*Atkins v. Disintegrating Co.*, 18 Wall. 272; *Casey v. Leary*, 2 Ben. 530; Fed. Cas. No. 2497; *Manchester v. Hotchkiss*, 13 Int. Rev. Rec. 125; Fed. Cas. No. 9004; but see *Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. No. 5657; *Wilson v. Pierce*, 15 Law Rep. 137; Fed. Cas. No. 17826; *New England Ins. Co. v. Navigation Co.*, 13 Int. Rev. Rec. 94; Fed. Cas. No. 10154.) This provision does not apply to a person who has never been an inhabitant of the United States. (*Cushing v. Laird*, 4 Ben. 70; Fed. Cas. No. 3508.) A prize proceeding is a civil suit, and if against the person, can be instituted only in the district where he is inhabitant or is found. (*Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. No. 5657.) Attachment will lie against in debt or contract or tort. (*McGrath v. Candalero*, Bee, 64; Fed. Cas. No. 8810; *Bouysson v. Miller*, Bee, 186; Fed. Cas. No. 1709.) It may be issued against a nonresident in an action on contract, even if the nonresident be a corporation. (*Clarke v. Navigation Co.*, 1 Story, 531; Fed. Cas. No. 2859.)

Where jurisdiction founded exclusively on diverse citizenship.—Where the diversity of citizenship is the sole ground of jurisdiction, it requires no more to constitute a residence than is required in the residence element of citizenship (*Marks v. Marks*, 75 Fed. Rep. 321); and it is permissible to bring a suit for partition in a district in which only a part of such defendants reside. (*Greeley v. Lowe*, 155 U. S. 58.) The act of 1888 requires an action at

law, the jurisdiction of which is founded wholly upon diversity of citizenship, to be brought in the State and district of which either plaintiff or defendant is a citizen.

§ 26a. Suits for infringement of patents.— That in suits brought for the infringement of letters patent the circuit courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought. (20 U. S. Stats. 695.)

Note.—Prior to the passage of the above section an action could not be brought against a person or corporation for an infringement of a patent in the Federal courts of a State, other than the State of residence of the person or of the corporation. (National Typewriter Co. v. Pope Mfg. Co., 56 Fed. Rep. 849; Adriance Platt & Co. v. McCormick Harvesting Mach. Co., 55 Fed. Rep. 287; Gorham Mfg. Co. v. Watson, 74 Fed. Rep. 418; Donnelly v. United States, 66 Fed. Rep. 613; Cramer v. Singer Mfg. Co., 59 Fed. Rep. 74; Union Switch & S. Co. v. Hall Signal Co., 65 Fed. Rep. 625; but see, contra, Smith v. Sargent Mfg. Co., 67 Fed. Rep. 801; Earl

v. Southern Pac. Co., 75 Fed. Rep. 609; Noonan v. Chester Park Athletic Club, 75 Fed. Rep. 334; National Butter Works v. Wade, 72 Fed. Rep. 298; Re Hohorst, 150 U. S. 653; Southern Pac. Co. v. Earl, U. S. App. 82 Fed. Rep. 690). A nonresident of the district may be enjoined from committing acts of infringement within the district when he comes into it for that purpose, although he may not be subject to service of process therein or be sued as a defendant. (Kennedy v. Penn. Iron & Coal Co., 67 Fed. Rep. 339.) Under the above section it is not necessary that the defendant be an inhabitant of the district if service is properly obtained on him. (Westinghouse Air Brake Co. v. Great Northern Ry. Co., 84 Fed. Rep. 9.)

§ 26b. Suits on bonds, etc.—That any surety company doing business under the provisions of this act may be sued in respect thereof in any court of the United States which has now, or hereafter may have, jurisdiction of actions or suits upon such recognizance, stipulation, bond or undertaking, in the district in which such recognizance, stipulation, bond or undertaking was made or guaranteed, or in the district in which the principal office of such company is located. And for the purposes of this act such recognizance, stipulation, bond or undertaking shall be treated as made or guaranteed in the district in which the office is located, to which it is returnable or in which it is filed, or in the district in which the principal in such recognizance, stipulation, bond, or undertaking resided when it was made or guaranteed. (28 U. S. Stats. 280.)

§ 27 (746). **Causes not discontinued by new term.**—When the trial or hearing of any cause, civil or criminal, in a circuit or district court, has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; and the court may proceed therein and bring it to a conclusion, in the same manner and with the same effect as if another stated term of the court had not intervened. (Rev. Stats., sec. 746.)

The trial is in progress although the jury is not complete, where some of the jury have been sworn. (U. S. v. Loughery, 13 Blatchf. 267.)

§ 28 (735). **Captures of insurrectionary property.**—Proceedings for the condemnation of any property captured, as prize, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or prompting an insurrection against the government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted. (18 U. S. Stats. 318; 1 Sup. Rev. Stats. 138; Rev. Stats., sec. 735.)

§ 29. **Proceedings to enjoin comptroller of the currency.**—All proceedings by any national bank-

ing association to enjoin the comptroller of the currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located. (Rev. Stats. sec. 736.)

§ 30. **Suits of a local nature in States containing several districts.**—In suits of a local nature, where the defendant resides in a different district in the same State from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides. (Rev. Stats. sec. 741.)

§ 31. **Where land lies in different districts of same State.**—Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same State, may be brought within the circuit or district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted. (Rev. Stats. sec. 742.)

Note.—Suits by the United States to enforce the rights of a tribe of Indians in a fishery is a suit of a local nature. (U. S. v. Winans, 73 Fed. Rep. 72.)

§ 32. **Process, where returnable—ARKANSAS.**—All process, civil and criminal, against persons residing in the counties of Columbia, Howard, Hempstead, La Fayette, Little River, Miller,

Nevada, Ouachita, Pike, and Sevier, shall be made returnable to said courts, respectively, at said city of Texarkana; provided, that all crimes and offenses heretofore committed within the division created by this act shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (Approved February 28, 1887; 24 U. S. Stats. 428; the same rule approved in act approved February 17, 1887, 24 U. S. Stats. 406.) All process issued against defendants residing in Montgomery county shall be returned to Little Rock until otherwise provided. (27 U. S. Stats. 3.) All process, civil and criminal, hereafter issued against persons residing in the eastern division, shall hereafter be made returnable to the courts, respectively, to be held at the city of Helena. All process, civil and criminal, against persons residing in the northern division shall be made returnable to the courts, respectively, to be held at the city of Batesville; and all process, civil and criminal, against persons residing in any of the remaining counties of the eastern district of the State shall be made returnable to the courts to be held at the city of Little Rock. (29 U. S. Stats. 591.)

CALIFORNIA.—All process returnable to or proceedings noticed for any term of the present circuit or district court of California shall be deemed returnable to the next term of said courts, respectively, in the said northern district, as fixed by this act. (24 U. S. Stats. 309.)

GEORGIA—*Western division of northern dis-*

trict.—All process, civil and criminal, issued against citizens residing in said counties shall be made returnable to the said courts, respectively, at the said city of Columbus, and not otherwise. (26 U. S. Stats. 1110.) All mesne and final process, subject to the provisions hereinbefore contained, issued in either of said divisions, may be served and executed in either or both of the divisions. (21 U. S. Stats. 63.)

IDAHO.—All mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or all of said divisions. (27 U. S. Stats. 73.)

KANSAS.—All mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or both of the divisions. (26 U. S. Stats. 129; 27 U. S. Stats. 24.)

KENTUCKY.—In the district of Kentucky the clerks of the circuit and district courts, respectively, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest a court, if he have information sufficient, and shall immediately, upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk

known the residence of the defendant when the action was brought. (Rev. Stats. sec. 745.)

LOUISIANA.—All processes from the circuit and district courts of the United States from the western district of Louisiana against defendants residing in the parishes of Saint Landry, Saint Martin, Cameron, Calcasieu, La Fayette, and Vermillion, in the State of Louisiana, shall be returned to said courts at Opelousas; all process against defendants residing in the parishes of Rapides, Vernon, Avoyelles, Catahoula, Grant, and Winn shall be returned to Alexandria; all processes against defendants residing in the parishes of Caddo, De Soto, Bossier, Webster, Claiborne, Bienville, Natchitoches, Red River, and Sabine shall be returned to Shreveport; and all processes against defendants residing in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln shall be returned to Monroe. (25 U. S. Stats. 388.) All processes from the circuit and district courts for the eastern district of Louisiana against defendants residing in the parishes of Point Coupee, West Baton Rouge, Iberville, Ascension, East Feliciana, West Feliciana, East Baton Rouge, Saint Helena, and Livingston shall be returned to said courts at Baton Rouge, Louisiana, and all processes against defendants residing in other parishes of the eastern district of Louisiana shall be returned to New Orleans. (25 U. S. Stats. 438.)

MINNESOTA.—All civil process from the cir-

cuit and district courts of the United States for said district of Minnesota, against defendants residing or found therein, shall be returned to the place appointed for the holding of said courts in the division where such defendant resides. (26 U. S. Stats. 72.)

MISSISSIPPI.—Process issuing from the courts of either division of said northern district shall be directed to the marshal of said northern district, and may be executed by him or his deputies upon the party or parties for whom issued, wherever found in said northern district. (22 U. S. Stats. 101.) All processes issued out of said courts at Meridian against defendants residing in the counties of Lauderdale, Kemper, Noxubee, Leake, Neshoba, Newton, Jasper, Clarke, Wayne, Jones, or any other county, shall be returned to the courts hereby provided to be held in Meridian. (28 U. S. Stats. 115.) Process to residents of Claiborne County returnable to Vicksburg. (30 U. S. Stats.) District Court process returnable formerly to Mississippi now to Biloxi. (30 U. S. Stats.)

MISSOURI.—Process issuing out of the courts of either division of said districts shall be directed to the marshal of the district in which the division is located, and may be executed by him or his deputies upon the party or parties against whom issued, wherever found within his district. (24 U. S. Stats. 424.) All process, civil and criminal, hereafter issued against persons residing in said county of Andrain shall be made returnable to the

courts held at the city of Saint Louis, in the State of Missouri. (29 U. S. Stats. 502.)

NORTH DAKOTA.—All mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or all of said divisions. (26 U. S. Stats. 67.)

OHIO.—All mesne and final process, subject to the provisions hereinbefore contained, issued in either of said divisions, may be served and executed in either or both of the divisions. (20 U. S. Stats. 101.) All mesne and final process subject to the divisions hereinbefore contained, issued in either of said divisions, may be served and executed in either or both of the divisions. (21 U. S. Stats. 63.)

TENNESSEE.—All process issued against defendants residing in said county of Hardeman shall be returned to Jackson, and all civil causes of action which have accrued in said county, of which the courts of the United States have jurisdiction, shall be cognizable in the court at Jackson, but all offenses committed in said county against the laws of the United States before the passage of this act shall be cognizable in the court of the western division of the western district of Tennessee held at Memphis; and actions or proceedings now pending at Memphis against defendants residing in said county of Hardeman may, on the application of either party, be transferred to the court at Jackson; and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the clerk of the court

at Jackson, and the same shall proceed in all respects as though originally commenced in said court. (Approved January 15, 1883; 22 U. S. Stats. 402.) All process hereafter issuing, except as hereinafter provided, against citizens of said county of Grundy, from the district or circuit courts of said State, shall be returnable before the district or circuit courts for the middle district of Tennessee; and that any case now pending in the district or circuit court of the United States for the southern district of east Tennessee against citizens of said county of Grundy may, at their election, be transferred to the district or circuit court for the middle district of Tennessee at Nashville. (23 U. S. Stats. 280.) Hereafter all process issuing, except as hereinbefore provided, against citizens of the county of Fentress from the district and circuit courts of the United States shall be returnable before said court at Chattanooga in said State; provided, that causes now pending in the middle district of Tennessee from Fentress county shall be determined where pending, except in cases where both parties consent to removal; and provided, further, that all prosecutions for crimes of offenses heretofore committed in said county shall be commenced and proceeded with as if this act had not been passed. (Approved, December 27, 1884; 23 U. S. Stats. 280.)

TEXAS.—All prosecutions in either of said districts for offenses against the laws of the United States shall be tried in that division of the district to which process for the county in which said offenses are committed is by said section required to

be returned. And all writs and recognizances in said prosecutions shall be returned to that division in which said prosecutions by this act are to be tried. (21 U. S. Stats. 198.) All process issued against defendants residing in any county which may hereafter be created by law, shall be returned to the nearest place for holding court in the judicial district within which said county is formed. And if there be more than one defendant, and they reside in different divisions of the district, the plaintiff may sue in either division, and send duplicate writ or writs to the other defendants, on which the plaintiff or his attorney shall indorse that the writ thus sent is a copy of a writ sued out of a court of the proper division of the said district; and the said writs, when executed and returned into the office from which they issued, shall constitute one suit, and be proceeded in accordingly. (20 U. S. Stats. 318.) All process issued against defendants residing in the counties of Brazos, Robertson, Leon, Limestone, Freestone, McLennan, Falls, Bell, Coryell, Hamilton, Bosque, Somerville, and Hill shall be returned to Waco. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35; 29 U. S. Stats. 456.) All process issued against defendants residing in the counties of Navarro, Johnson, Ellis, Kaufman, Dallas, Rockwall, Hunt, Collin, Denton, Cooke, and Montague shall be returned to Dallas. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35; as amended 29 U. S. Stats. 456.) All process issued against defendants residing in the counties of Comanche, Hood, Erath, Tarrant, Parker, Palo Pinto, Wise, Clay, Jack, Young, Archer, Wichita, Wilbarger, Baylor, Hardeman, Cottle,

Motley, Briscoe, Hall, Childress, Collingsworth, Donley, Armstrong, Randall, Deal, Smith, Oldham, Potter, Carson, Gray, Wheeler, Hemphill, Lipscomb, Ochiltree, Roberts, Hutchinson, Hansford, Sherman, Moore, Hartley, and Dallam shall be returned to Fort Worth. (29 U. S. Stats. 486.)

All process issued against defendants residing in counties of Eastland, Stephens, Throckmorton, Shackelford, Callahan, Taylor, Jones, Haskell, Knox, Nolan, Fisher, Stonewall, Kent, Dickens, King, Crosby, Garza, Lubbock, Gaines, Andrews, Mitchell, Scurry, Borden, Howard, Martin, and Midland shall be returned to Abilene. All process issued against defendants residing in the counties of Jackson, Matagorda, Brazoria, Wharton, Colorado, Fort Bond, Austin, Harris, Galveston, Chambers, Jefferson, Orange, Hardin, Liberty, Montgomery, Waller, Grimes, Madison, Walker, San Jacinto, Polk, Tyler, Jasper, and Newton shall be returned to Galveston. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.)

All process issued against defendants residing in the counties of Sabine, San Augustine, Shelby, Nacogdoches, Angelina, Trinity, Houston, Anderson, Cherokee, Panola, Rusk, Smith, Henderson, Vanzandt, Rains, Gregg, and Wood shall be returned to Tyler. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.)

All process issued against defendants residing in the counties of Upsher, Harrison, Marion, Cass, Bowie, Red River, Titus, Camp, Hopkins, Morris, and Franklin shall be returned to Jefferson. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.)

All process issued against defendants residing in the counties of Cameron, Hidalgo, and Starr shall be returned to Brownsville. (20 U. S. Stats. 318, as amended 23 U. S. Stats. 35.) All process issued against defendants residing in the counties of Calhoun, Victoria, Goliath, Bee, Live Oak, Karnes, De Witt, Lavaca, Gonzales, Guadalupe, Wilson, Atacosa, McMullen, Bexar, Comal, Kendall, Kerr, Edwards, Bandera, Medina, Frio, Zavala, Uvalde, and Kinney shall be returned to San Antonio. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.) So much of the 20 U. S. Stats. 318 act as makes al process against defendants residing in the counties of Aransas, Duval, Nueces, La Salle, Zapata, San Patricio, Refugio, Dimmit, Webb, Encinal, and Maverick returnable to Brownsville is hereby repealed, and such process is hereby made returnable to San Antonio; and all causes of civil action which have accrued in said counties, or either of them, since the passage of the act to which this is an amendment, or which shall hereafter accrue, shall be cognizable in the court at San Antonio. (21 U. S. Stats. 10.) All process issued against defendants residing therein shall be returned to Galveston; and all civil causes of action which have accrued in said county, of which the courts of the United States have jurisdiction, shall be cognizable in the court of Galveston, but all offenses committed in said county against the laws of the United States before the passage of this act shall be cognizable in the court of the western district, as provided in said act of the twenty-fourth

of February, eighteen hundred and seventy-nine. (21 U. S. Stats. 10.) All process issued against defendants residing in the counties of Fayette, Washington, Burleson, Milan, Williamson, Lee, Bastrop, Caldwell, Hays, Travis, Blanco, Gillespie, Burnett, Llano, Mason, Kimball, Menard, Concho, McCulloch, San Saba, and Lampasas shall be returned to Austin. (20 U. S. Stats. 318; as amended 23 U. S. Stats. 35.) All process issued against defendants residing in the counties of Glasscock, Sterling, Coke, Tom Green, Crockett, Schleichez, Sutton, Irion, Mills, Runnels, Coleman, and Brown shall be returned to San Angelo. (29 U. S. Stats. 456.) All process issued after this act shall take effect against defendants residing in the counties of El Paso, Pecos, Presidio, Yoakum, Cockran, Parmer, Castro, Lamb, Hockley, Terry, Dawson, Swisher, Hale, Lynn, and Floyd, shall be returned to the city of El Paso. (20 U. S. Stats. 218; as amended 23 U. S. Stats. 35; as amended 29 U. S. Stats. 456.) All civil process issued against persons resident in said counties of Lamar, Fannin, Red River, and Delta, cognizable before the United States courts, shall be made returnable to the courts, respectively, to be held at the city of Paris. (25 U. S. Stats. 786.) All civil process issued against persons resident in the said counties of Jefferson, Orange, Newton, Jasper, Hardin, Liberty, Tyler, San Augustine, Sabine, Polk, and San Jacinto, and cognizable before the United States courts, shall be made returnable to the courts to be held at the city of Beaumont; and all prosecutions for offenses

committed in either of said counties shall be tried in the appropriate United States court of the city of Beaumont. (29 U. S. Stats. 516.)

UTAH.—All mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or both of said divisions, and all pending processes shall be returnable to the terms herein provided for. (29 U. S. Stats. 620.)

WASHINGTON.—All mesne and final process subject to the provisions of this act, issued in either of said divisions, may be served and executed in either or both of said divisions. (26 U. S. Stats. 45.)

§ 33. Offenses, where cognizable—ALABAMA.—All offenses hereafter committed in either of said divisions shall be cognizable and indictable within the division where committed. (Approved May 2, 1884; 23 U. S. Stats. 18.)

ARKANSAS.—All crimes and offenses heretofore committed within said western district shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (24 U. S. Stats. 83; 27 U. S. Stats. 3.)

CALIFORNIA.—All offenses heretofore committed in the district of California shall be prosecuted, tried, and determined in the same manner and with the same effect, to all intents and purposes, as if this act had not been passed. (Approved Aug. 5, 1886; 24 U. S. Stats. 309.)

GEORGIA.—All prosecutions for crimes or offenses committed after the date this act takes effect, in any of the counties of the northeastern division, shall be cognizable within this division; and all prosecutions for crimes or offenses committed prior to that date within any of said counties taken from the northern district or committed in the southern district, as heretofore constituted, shall be commenced and proceeded with as if this act had not been passed. (21 U. S. Stats. 63; 25 U. S. Stats. 671.)

IOWA.—All prosecutions for crimes or offenses hereafter committed in either of said districts shall be cognizable within such district; and all prosecutions for crimes or offenses heretofore committed in the district of Iowa shall be commenced and proceeded with as if this act had not been passed. (22 U. S. Stats. 172, sec. 744.)

ILLINOIS.—All crimes and offenses heretofore committed within the said district shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (24 U. S. Stats. 443.)

KANSAS.—The United States courts in Kansas had jurisdiction of crimes against the laws of the United States committed within parts of the Indian Territory until September 1, 1896, when the jurisdiction was given to the courts of Indian Territory. (28 U. S. Stats. 697.)

LOUISIANA.—All prosecutions for crimes or offenses hereafter committed in either of the divisions [of the western district of Louisiana] shall

be cognizable within such division; provided, that all crimes and offenses heretofore committed within the divisions created by this act shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (25 U. S. Stats. 388.)

MICHIGAN.—Any person charged with violating any of the penal or criminal statutes of the United States, of which the said circuit or district courts have jurisdiction, shall be proceeded against by indictment or otherwise, within the division of said district where the alleged offense or offenses shall be committed, and shall have his or her trial at a term of the said court held in said division, unless for cause shown the judge shall otherwise direct. (20 U. S. Stats. 175; 28 U. S. Stats. 68.) The circuit and district courts for the eastern district of Michigan shall continue to have the same jurisdiction in reference to all crimes and offenses committed prior to the passage of this act in any portion of the State of Michigan by this act detached from said eastern district and attached to said western district. (20 U. S. Stats. 175.)

MINNESOTA.—That all criminal proceedings instituted for the trial of offenses against the laws of the United States arising in the district of Minnesota shall be brought, had, and prosecuted in the division of said district in which such offenses were committed. (28 U. S. Stats. 102.)

MISSISSIPPI.—All prosecutions for crimes and offenses heretofore committed shall be commenced and prosecuted as if this act had not been

passed. (22 U. S. Stats. 101.) Rule applies to western division. (24 U. S. Stats. 127.) All crimes and offenses heretofore committed within said southern district shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (At Vicksburg, 24 U. S. Stats. 430; at Mississippi City, 25 U. S. Stats. 78; at Meridian, 28 U. S. Stats. 115.)

MISSOURI.—All crimes and offenses heretofore committed within either of said districts shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (20 U. S. Stats. 263; 24 U. S. Stats. 424, sec. 6.) Prosecutions in Audrain county to be tried at St. Louis. (29 U. S. Stats. 502.)

MONTANA.—Causes, civil or criminal, may be transferred by the court or the judge thereof from Helena to Butte, or from Butte to Helena, in said district, when the convenience of parties or the ends of justice would be promoted by the transfer, and any interlocutory order may be made by the court or judge thereof in either place. (30 U. S. Stats. 685.)

NORTH CAROLINA.—All crimes and offenses heretofore committed in either of said counties, for which the defendants have been bound over, shall be prosecuted, tried, and determined in the same manner and with the same effect as if this act had not been passed. (28 U. S. Stats. 274.)

OHIO.—All offenses committed in either of the subdivisions shall be cognizable and indictable within said division. (20 U. S. Stats. 101.) All prosecutions for crimes or offenses hereafter committed in either of the subdivisions shall be cognizable within such division; and all prosecutions for crimes or offenses heretofore committed within either of said counties taken as aforesaid from the northern district, or committed in the southern district as hitherto constituted, shall be commenced and proceeded with as if this act had not been passed. (21 U. S. Stats. 63.) All offenses committed in said county against the laws of the United States, before the passage of this act, shall also be cognizable in the United States court for the said northern district until final disposition of the same. (26 U. S. Stats. 799.)

TENNESSEE—*Prosecution for crimes.*—All prosecutions for crimes and offenses hereafter committed in either of the subdivisions shall be cognizable within such division; and all prosecutions for crimes or offenses heretofore committed within said county taken as aforesaid from the middle district, or committed in the eastern district as hitherto constituted, shall be commenced and proceeded with as if this act had not been passed. (21 U. S. Stats. 175.) All prosecutions for crimes and offenses heretofore committed in [Grundy and Fentress] counties, shall be commenced and proceeded with as if this act had not been passed. (23 U. S. Stats. 280.) And the rule is applied in Perry county. (29 U. S. Stats. 91.)

TEXAS.—And all prosecutions for offenses committed in [Lamar, Fannin, Red River, and Delta] counties, shall be tried in the divisions of said eastern district of which said counties form a part; *provided*, that no process issued or prosecution commenced, or suit instituted before the passage of this act shall be in any way affected by the provisions thereof. (25 U. S. Stats. 786.) And all prosecutions for offenses committed in either of said last mentioned counties shall be tried in the division of said eastern district of which said counties form a part; *provided*, that no process issued or prosecution commenced or suit instituted before the passage of this act shall be in any way affected by the provisions thereof. (25 U. S. Stats. 786.) All offenses committed in [Grayson] county against the laws of the United States before the passage of this act shall also be cognizable in the United States courts for the said northern district until final disposition of the same. (26 U. S. Stats. 687.) All prosecutions for offenses committed in Jefferson, Orange, Newton, Jasper, Hardin, Liberty, Tyler, San Augustine, Sabine, Polk and San Jacinto and cognizable before the United States courts shall be made returnable to the courts respectively to be held at the city of Beaumont. (29 U. S. Stats. 516.)

UTAH.—All suits, prosecutions, process, recognizances, bail bonds and other things pending in or returnable to said court are hereby transferred to and shall be made returnable to and have force in the said respective terms in this Act provided, in

the same manner and with the same effect as they would have had had said place of holding been designated in the original Act. (29 U. S. Stats. 621.)

§ 34. (729). **Offenses punishable with death, where tried.**—The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. (Rev. Stats. 729.)

Place of trial.—If a party goes to trial without asking for a trial within the county where the offense was committed, he waives all benefit under this section, as this section leaves the case to be determined by the discretion of the court upon consideration of inconvenience. (U. S. v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.) It is not necessary that the indictment should allege the county in which the offense was committed (U. S. v. Wilson, Bald. 78; Fed. Cas. No. 16730), and whether the crime must have been committed in some place within the exclusive jurisdiction of the United States, query? (U. S. v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.)

§ 35. (730). **Offenses on the high seas, etc., where triable.**—The trial of all offenses committed upon the high seas or elsewhere, out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought. (Rev. Stats. 730.)

This section relates only to crimes connected with maritime jurisdiction (U. S. v. Alberty, Hemp. 444; Fed. Cas. No. 14426); it does not contemplate that the government shall have the election in which of two districts to proceed to trial. (U. S. v. Bird, 1

Sprague, 299; Fed. Cas. No. 14597); and see U. S. v. Thompson, 1 Sum. 168; Fed. Cas. No. 16492.) An offender captured on the high seas may be tried in the district where he is first legally apprehended. (U. S. v. Arwo, 19 Wall. 486; U. S. v. Baker, 5 Blatchf. 6; Fed. Cas. No. 14501.) The court to which he is first brought is substituted for the place in which the crime was committed (Ex parte Bollman, 4 Cranch, 75); for though he come into one district yet he may be tried in another, if there first apprehended. (U. S. v. Thompson, 1 Sum. 168; Fed. Cas. No. 16492; U. S. v. Corrie, 23 Law Rep. 145; Fed. Cas. No. 14869.) If the vessel was bound for a port, and the offender is in custody in that port, it is evidence that he was apprehended in the district of that port. (U. S. v. Mingo, 2 Curt. 1; Fed. Cas. No. 15781; U. S. v. Magill, 4 Dall. 425.) It is not usual to give evidence that he was apprehended in the district in which he is tried. (U. S. v. Mingo, 2 Curt. 11; Fed. Cas. No. 15781. See Jones v. United States, 137 U. S. 202; In re Rose, 140 U. S. 453.)

§ 36. (731). Offenses begun in one district and completed in another.—When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (Rev. Stats. sec. 731.)

This section does not apply to a libel written in one district and published in another. (Ex parte Buell, 3 Dill. 116; Fed. Cas. No. 2102.) That it shall be deemed to have been committed in either. (Ball v. United States, 140 U. S. 118.)

CHAPTER III.

DISTRICT COURTS—ORGANIZATION.

- § 38. District judges, appointment and residence.
- § 39. Newly admitted States, number of judges.
- § 40. Special statutory provisions.
- § 41. Salaries of district judges.
- § 42. Salaries of judges to be paid monthly.
- § 43. Clerks.
- § 44. Clerks in States enumerated.
- § 45. Deputy clerks.
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- § 46a. District court commissioners, appointment.
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§ 38. (551). District judges, appointment and residence.—A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. (Rev. Stats. sec. 551.)

Vacancy.—See post, secs. 151, 152.

§ 39. Newly admitted States.—There shall be appointed in each of the following districts, one district judge, who shall reside therein: Idaho (26 U. S. Stats. 218); Montana (25 U. S. Stats. 676); North Dakota (25 U. S. Stats. 676); South Dakota (25 U. S. Stats. 676); Utah (28 U. S. Stats. 110);

Washington (25 U. S. Stats. 676); Wyoming (26 U. S. Stats. 225).

§ 40. (552). **Special statutory provisions.**—There shall be appointed in each of the States of Alabama, Georgia, Mississippi, South Carolina, and Tennessee, one district judge, who shall be district judge for each of the districts included in the State for which he is appointed, and shall reside within some one of the said districts. And for offending against this provision, such judges shall be liable as in the preceding section. [Ante, sec. 38.] (Rev. Stats. sec. 552.)

ALABAMA, *southern district.*—There shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a district judge for the southern judicial district of the State of Alabama; [and said judge shall be entitled to receive a yearly salary of three thousand five hundred dollars, payable quarterly]. (24 U. S. Stats. 213.) The jurisdiction of the present district judge for the several districts of Alabama, and his successors, shall hereafter be confined to the northern and middle districts of said State. (24 U. S. Stats. 213.)

CALIFORNIA, *southern district.*—There shall be appointed a district judge for said southern district of California, who shall reside therein. (24 U. S. Stats. 308.)

Present incumbent not affected.—Nothing in this act shall in any manner affect the tenure of office of the judge, marshal, United States attorney, or other officers of the present district of California,

who shall, respectively, be entitled to the same salaries, fees, and emoluments provided by law. (24 U. S. Stats. 308.)

COLORADO.—For the district of Colorado, a district judge and a marshal and a district attorney of the United States shall be appointed by the President, by and with the advice and consent of the Senate, with the same rights, powers, and duties provided by law for similar officers in the other States, except as herein otherwise provided. (19 U. S. Stats. 61.) Until the judge for said district of Colorado shall be duly appointed and qualified, the district judge of the United States for the district of Nebraska shall act as the district judge of the district of Colorado, and shall have and exercise the same jurisdiction and powers in the district hereby created as he has in the district of Nebraska. (19 U. S. Stats. 61.) The circuit and district courts for the district of Colorado, and the judges thereof respectively, shall possess the same powers and jurisdiction, and perform the same duties possessed and required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. (19 U. S. Stats. 61.)

FLORIDA.—Section 553 of Rev. Stats., requiring the district judge for the southern district of Florida to reside at Key West, was repealed March 13, 1896. (29 U. S. Stats. 55.)

GEORGIA, *northern district*.—A district judge for the northern district of Georgia shall be appointed, who shall have all the powers and perform

all the duties held and performed by the other district judges of the courts of the United States. (22 U. S. Stats. 47.)

GEORGIA, *southern district*.—The district judge now holding office for both said districts shall be assigned to and hereafter be the district judge for the southern district in said State. (22 U. S. Stats. 47.)

IDAHO.—A district judge shall be appointed for the district of Idaho, and one United States attorney, and one United States marshal. (26 U. S. Stats. 218.) The circuit and district courts for said district, and the judges thereof respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. (26 U. S. Stats. 218.)

IOWA, *southern district*.—The present judge of the district of Iowa is hereby declared to be the district judge for the southern district of Iowa. (22 U. S. Stats. 176.)

IOWA, *northern district*.—The President of the United States shall be, and is hereby, authorized and directed, by and with the advice and consent of the Senate, to appoint a district judge for the northern district of Iowa. (22 U. S. Stats. 176.)

LOUISIANA—*Judge*.—A person learned in the law shall be appointed by the President of the United States, by and with the advice and consent of the Senate, district judge thereof, with a salary

of three thousand five hundred dollars per annum, payable quarterly, and with the same powers and duties as the district judge of the United States for the district of Louisiana as it now exists, and such as are conferred on him or required of him by this act. (21 U. S. Stats. 507, sec. 6.)

MISSISSIPPI.—Said district courts for the eastern and western divisions of said northern district shall have the same powers and jurisdiction, with the same right to parties to prosecute appeals and writs of error therefrom as now pertains to the district court for said northern judicial district. All prosecutions for crimes and offenses heretofore committed shall be commenced and prosecuted as if this act had not passed. (22 U. S. Stats. 103.)

MISSOURI—*Divisions of districts*.—There shall be, and there are hereby, established a district and circuit court of the United States in each of the several divisions of the said eastern and western districts herein created. (24 U. S. Stats. 425; as amended 26 U. S. Stats. 106.)

TENNESSEE, *western district*.—There shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a district judge for the western district of Tennessee, who shall, from and after the time of his appointment, hold the terms of the United States district court in said district at the times and places required by law. (20 U. S. Stats. 132.) The present district judge of said State shall be and remain the district judge of the United States for the mid-

dle and eastern districts thereof, as if originally appointed thereto. (20 U. S. Stats. 132, sec. 3.)

TEXAS—*Assignment of judges.*—The present judge of the eastern district of Texas shall be, and he is hereby, assigned to hold said courts in the said eastern district, and shall exercise the same jurisdiction and perform the same duties within the said district as he now exercises and performs within his present district. (20 U. S. Stats. 318.) The present judge of the western district of Texas shall be, and he is hereby, assigned to hold said courts in the western district of Texas, and shall exercise the same jurisdiction and perform the same duties within the said district as he now exercises and performs within his present district. (20 U. S. Stats. 318.)

Judge for northern district.—There shall be appointed a district judge for the northern district of Texas, who shall possess the same powers and do and perform all such duties in his district as are now enjoyed or in any manner appertain to the present district judges for said eastern and western districts of Texas. (20 U. S. Stats. 318.) That there shall be in the northern judicial district of the State of Texas an additional district judge who shall be appointed by the President, by and with the advice of the Senate, and shall possess the same qualifications and have the same power and jurisdiction now prescribed by law in respect to the present district judge therein. No vacancy in the office of the existing judge of said northern judicial district of Texas shall be filled by appointment,

and in case of such vacancy there shall be thereafter one district judge only for said district. (30 U. S. Stats. 240.)

WYOMING.—There shall be appointed for said district one district judge, one United States attorney, and one United States marshal, who shall reside in the district. (26 U. S. Stats. 225.)

§ 41. Salaries of district judges.—The salaries of the several judges of the district courts of the United States shall hereafter be at the rate of five thousand dollars per annum. (Act approved February 24, 1891; 26 U. S. Stats. 783, superseding the original sec. 554 of the Revised Statutes.)

Salaries of district judges.—Under the original section of the Revised Statutes, and of statutes subsequently passed but previously to the 24th February, 1891, the salaries of the various judges of the United States district courts were fixed at various amounts, payable quarterly from the United States treasury, as follows: California, U. S. Rev. Stats. § 554; of judge of southern district, 24 U. S. Stats. 308; Colorado, 19 U. S. Stats. 61; Georgia, northern district, 22 U. S. Stats. 47; Idaho, 26 U. S. Stats. 218; Illinois, U. S. Rev. Stats. § 554; Louisiana, U. S. Rev. Stats. § 554; of western district, 21 U. S. Stats. 507; Maryland, U. S. Rev. Stats. § 554; Massachusetts, U. S. Rev. Stats. § 554; Montana, 25 U. S. Stats. 682; New Jersey, U. S. Rev. Stats. § 554; New York, U. S. Rev. Stats. § 554; North Dakota, 25 U. S. Stats. 682; Ohio, U. S. Rev. Stats. § 554; Pennsylvania, U. S. Rev. Stats. § 554; South Dakota, 25 U. S. Stats. 682; Tennessee, 20 U. S. Stats. 132; Texas, 20 U. S. Stats. 320; Washington, 25 U. S. Stats. 682; Wyoming, 25 U. S. Stats. 225. Since 1891 a district has been created in Utah, and the salary of the judge fixed at \$5,000. (28 U. S. Stats. 119.)

§ 42. Salaries to be paid monthly.—Thereafter the salaries appropriated for the United States judges and judges of the court of claims, and of the Territories, may be paid monthly. (Appropriations of supreme, circuit, and district judges, District of Columbia, and retired judges. Approved March 3, 1881. 21 U. S. Stats. 412; 1 Sup. Rev. Stats. 602; 29 U. S. Stats. 210.)

§ 43 (555). Clerks.—A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law. (Rev. Stats. § 555.)

§ 44 (556). Clerks in States enumerated.—ARKANSAS.—In the eastern district of Arkansas there shall be appointed three clerks of the district court thereof, one of whom shall reside and keep his office at Little Rock, another of whom shall reside and keep his office at Helena, and a third who shall reside and keep his office at Texarkana. (19 U. S. Stats. 230; 27 U. S. Stats. 13; Rev. Stats. sec. 556.) That there shall be appointed in the northern division of the eastern district of the State of Arkansas one additional clerk of the district court and one of the circuit court who shall reside and keep their respective offices in the city of Batesville (29 U. S. Stats. 592.) That an additional clerk of the district court and an additional clerk of the circuit court for the western district of Arkansas shall be appointed to be clerks of said courts at Texarkana. (30 U. S. Stats. 682.)

CALIFORNIA, *southern district*.—The circuit and district judges of said southern district of Cali-

fornia shall, each, respectively, appoint a clerk for their respective courts, who shall reside and keep their office at Los Angeles, in said district, and who shall receive such fees and compensation for services performed by them, respectively, as are now fixed and limited by law. (24 U. S. Stats. 308.)

GEORGIA.—The clerk, marshal, and other officers of the southern district shall attend the terms of the courts in the northwestern division thereof, and if, in the opinion of the court, it becomes necessary, a deputy clerk may be appointed. (25 U. S. Stats. 671.)

IDAHO.—Clerks of the district and circuit courts in the district of Idaho shall be appointed who shall keep their offices at the capital of said State. (26 U. S. Stats. 217.)

ILLINOIS.—The clerks of the circuit and district courts of the northern district of Illinois shall be respectively the clerks of the courts of both divisions of the said district. (24 U. S. Stats. 442.) Each of said clerks, or his deputies, shall keep an office open at all times at each of the places of holding said court, and shall there keep the records, files, and documents pertaining to the court of that division; and said clerk shall be entitled to the same fees now allowed him by law. (24 U. S. Stats. 442.) The judge of the district court for the northern district of Illinois shall be authorized to appoint a clerk of such court at an annual salary of three thousand dollars, which amount is hereby appropriated. (28 U. S. Stats. 204.)

INDIANA. (30 U. S. Stats.)

IOWA, *northern and southern districts*.—That there shall be appointed by the judge of the northern district of Iowa, with the approval of the circuit judge of the eighth judicial circuit, a clerk for the district and circuit courts in and for said northern district of Iowa. The persons now acting as clerks for the district of Iowa shall be the clerks for the southern district of Iowa (22 U. S. Stats. 172.) That the clerk of the district court shall be the clerk of the circuit court at all the places where the same is held in said district, except at Des Moines. (21 U. S. Stats. 155.)

KENTUCKY.—In the district of Kentucky a clerk of the district court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are or may be provided concerning clerks in independent districts. (Rev. Stats. sec. 557.)

LOUISIANA, *western district*.—And the said judge shall appoint a clerk of the district court in the western district, and a clerk of the circuit court for said district shall be appointed in the same manner as other such clerks are appointed, and who shall receive for the services performed by them the same fees and compensation that are allowed to the clerks of such courts holding their session in New Orleans, in the same State, and shall be subject in every respect to the same restrictions and responsibilities. (21 U. S. Stats. 507.)

MICHIGAN.—The clerks of the circuit and district courts and the marshal and attorney of the eastern district of Michigan shall severally perform

the duties appertaining to his office respectively for said courts, when sitting at Bay City, pursuant to the terms of this act. (24 U. S. Stats. 423.)

MISSISSIPPI, *northern district*.—That the clerk of the northern judicial district of Mississippi shall be sole clerk of the courts of both divisions of the said district, to be appointed in the manner now prescribed by law. (22 U. S. Stats. 101.) Either he or his deputies shall reside at each of the places of holding said courts, and shall there keep an office, and the records, files and documents pertaining to the court of that division; and said clerk shall be entitled to the same fees now allowed to him by law. (22 U. S. Stats. 101.) He shall appoint a chief deputy for the court of that division in which he himself may not reside, who shall have all the powers of the clerk in his absence, and shall reside at the place of holding the court for the other division where the chief clerk does not reside. (22 U. S. Stats. 101.)

MISSOURI—Clerks for divisions of districts.—That there shall be appointed a clerk for each of said courts, at Hannibal, St. Joseph, City of Kansas and Springfield, and each clerk shall be a resident of the division in which the court of which he is clerk is held. (24 U. S. Stats. 424.) The clerk of each division shall keep an office, and the records, files and documents pertaining to the court of his division, and he shall discharge all the duties and receive the fees required or allowed by law. (24 U. S. Stats. 424.)

NORTH DAKOTA—*Deputy clerk*.—The clerk

of the circuit and district courts for said district shall each appoint a deputy clerk, at the place where their respective courts are required to be held, in the division of the district in which such clerk shall not himself reside, the appointment to be subject to judicial approval. (26 U. S. Stats. 68.)

SOUTH CAROLINA.—The office of the clerk of the district court shall be kept in the city of Greenville, and also in the city of Charleston, and the clerk shall reside in one of said cities, and shall have a deputy in the other. (26 U. S. Stats. 71.)

TENNESSEE, *eastern district.*—That the clerks of the district and circuit courts for the eastern district of Tennessee, and the marshal and district attorney for said district, shall perform the duties appertaining to their offices respectively for said courts. (21 U. S. Stats. 175.)

TEXAS, *northern district.*—The district judge of the northern district shall appoint a clerk of said court, who shall reside at one of the places designated in this act for holding the courts, and two deputies shall be appointed by the clerk, one of whom shall reside at each of the other places designated for holding the courts. (Approved February 24, 1879. See Rev. Stats. secs. 548, 554, 572, 658, 659, and Amendatory Act 21 U. S. Stats. 10; 1 Sup. Rev. Stats. 490; 20 U. S. Stats. 318.) The judge of the eastern district of the State of Texas shall appoint a clerk of the court to be held in the division of the eastern district, who shall reside at

the city of Paris, in the county of Lamar. (25 U. S. Stats. 787.)

UTAH.—There shall be appointed clerks of said [circuit and district] courts, who shall keep their offices at the capital of said State. (28 U. S. Stats. 110.)

WYOMING.—Clerks shall be appointed for said courts in the district of Wyoming, who shall keep their offices at the capital of the State. (26 U. S. Stats. 225.)

§ 45 (558). Deputy clerks.—One or more deputies of any clerk of a district court may be appointed by the court, on the application of the clerk, and may be removed at the pleasure of judges authorized to make the appointment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond, shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (Rev. Stats. sec. 558.)

Authority of.—A deputy clerk of the district court of Louisiana was authorized, under the act of March 3, 1821, to sign process in his own name as deputy. (Bragg v. Lorio, 1 Woods. 209; Fed. Cas. No. 1800.)

A warrant attested by the judge, sealed with the seal of the court, and signed by the deputy clerk, is sufficient, (Confiscation Cases, 20 Wall. 92.)

ARKANSAS.—The clerk of the courts for the eastern judicial district of Arkansas shall appoint a deputy for the said division, who shall keep an office open at all times in the city of Texarkana, and shall there keep the records, files, and documents pertaining to the courts authorized by this act. (24 U. S. Stats. 83. See 27 U. S. Stats. 13, where an additional clerk is provided for, who shall reside at Texarkana.)

GEORGIA, *western division, northern district*.—The clerk of the district and the clerk of the circuit court shall appoint a deputy clerk for the courts for said division, and the marshal of said northern district shall provide suitable rooms for the occupancy of said courts and the officers thereof. (26 U. S. Stats. 1110.)

IDAHO.—The clerk of the district of Idaho shall appoint a deputy clerk at the place where the district court is required to be held in the division of the district in which such clerk shall not himself reside, who shall in the absence of the clerk exercise all the powers and perform all the duties of clerk within the division for which he shall be appointed, provided the appointment shall be approved by the court, and may be annulled by such court at its pleasure. (27 U. S. Stats. 73.)

ILLINOIS—*Northern district*.—The clerk of the northern district of Illinois shall appoint at least one deputy residing in the southern division,

unless he shall reside there himself, and also maintain an office at that place of holding court. (24 U. S. Stats. 442.) The clerk of the southern district of Illinois shall appoint at least one deputy, to reside in the city of Quincy, unless he shall reside there himself, and also maintain an office at that place of holding court. (25 U. S. Stats. 387.) In addition to his powers to appoint deputies, as now prescribed by law, each of said clerks shall be required to appoint a chief deputy for the court of that division in which he himself may not reside, who shall have all the powers of the clerk in his absence. (24 U. S. Stats. 442.)

INDIANA.—In the district of Indiana the clerk of the district court must appoint a deputy clerk for said court held at New Albany, and a deputy clerk for said court held at Evansville, who shall reside and keep their offices at said places respectively. (Rev. Stats. sec. 559.) Deputy at Hammond. (30 U. S. Stats.)

IOWA.—In the district of Iowa a deputy clerk of the district court shall be appointed to each place in the four divisions of said district where said court is required to be held, each of whom, in the absence of the clerk, may exercise all the official powers of clerk, at the place and within the division for which he is appointed. (Rev. Stats. sec. 560.)

KANSAS.—The clerks of the circuit and district courts for said district shall each appoint a deputy clerk at the city of Wichita, each of whom shall, in the absence of the clerk, exercise all the powers and perform all the duties of clerk within

the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the court for which they shall be respectively appointed, and they may be removed by such court at pleasure; and the clerk shall be responsible for the official acts and neglects of all such deputies. (26 U. S. Stats. 129.) The appointment of deputies to reside at Fort Scott under the same conditions is provided for. (27 U. S. Stats. 24.) The clerk of the district court for the district of Kansas, and the marshal for said district, shall appoint a deputy to reside and keep their offices at Salina, and who shall do and perform all the duties of their offices respectively. (25 U. S. Stats. 392.)

KENTUCKY—*Owensborough division*.—That in and for the Owensborough division, the clerk of the district of Kentucky at Louisville shall appoint a deputy who shall reside at Owensborough, and in case of the death or removal of said deputy, or from other cause it becomes necessary, he shall appoint a successor or successors to said deputy in like manner in all respects as by law he may now appoint and remove deputies; and he may require bond of said deputy to himself, with surety for the faithful discharge of his duties and for indemnity in case of breach, on which actions may be maintained in said district court; and said deputy shall keep and preserve the records of the court at Owensborough; issue all writs, precepts, and process, and perform all other duties devolved upon his principal. (25 U. S. Stats. 389.)

LOUISIANA—*In divisions of western district.*—That a deputy clerk of the district court shall be appointed at each place in the four divisions of said western district where said court is required to be held, each of whom, in the absence of the clerk may exercise all the official powers of the clerk at the place and within the division for which he is appointed. (25 U. S. Stats. 388.)

In divisions of eastern district.—That a deputy clerk of the district court shall be appointed at each place in the two divisions of said eastern district where said court is required to be held, each of whom, in the absence of the clerk, may exercise all the official powers of clerk at the place and within the division for which he is appointed. (25 U. S. Stats. 438.)

MICHIGAN—*Western division.*—The clerk of the circuit and district courts for the western district of Michigan, shall appoint a deputy clerk for said courts, held at Marquette, who shall reside and keep his office at that place. (20 U. S. Stats. 175.) And said deputy shall keep in his office full records of all actions and proceedings in the said circuit and district courts for the northern division of said district held at that place, and shall have the same power to issue all processes from the said courts and perform any other duty that is or may be given to the clerks of other circuit and district courts in like cases. (20 U. S. Stats. 175.) Appointment of deputy clerks for the northern division of the eastern district is provided for in the same lan-

guage as the above, the said deputies to reside at Bay City. (28 U. S. Stats. 67.)

MINNESOTA—*In divisions of district.*—That the clerks of the circuit and district courts of the district of Minnesota shall each appoint a deputy clerk at the place where their respective courts are required to be held in the division of the district in which such clerk shall not himself reside, who shall keep his office and reside at the place appointed for holding said courts in the division of such residence, and shall keep the records of said courts for such division, and, in the absence of the clerk, may exercise all the official powers of the clerks within the division for which he is appointed; *provided*, that the appointment of such deputies shall be approved by the court for which they shall have been respectively appointed, and may be annulled by such court at its pleasure; and the clerks shall be responsible for the official acts and negligence of their respective deputies. (26 U. S. Stats. 73.)

MISSISSIPPI.—That the marshal and clerk of said southern district of Mississippi, as constituted before the passage of this act, shall appoint deputies who shall reside at Meridian. (28 U. S. Stats. 115.)

MISSOURI—*In divisions of western district.*—The clerks of the circuit and district courts for the western district of Missouri shall each appoint a deputy clerk at the place where their respective courts are required to be held in the division of the district in which such clerk shall not himself reside, each of whom shall, in the absence of the

clerk, exercise all the powers and perform all the duties of clerk within the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the court for which they shall be respectively appointed, and may be annulled by such court at its pleasure; and the clerk shall be responsible for the official acts and neglects of all such deputies. (20 U. S. Stats. 263.)

NORTH DAKOTA—*In divisions of district.*—That the clerk of the circuit and district courts for said district shall each appoint a deputy clerk at the place where their respective courts are required to be held in the division of the district in which such clerk shall not himself reside, each of whom shall, in the absence of the clerk, exercise all the powers and perform all the duties of clerk within the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the courts for which they shall have been respectively appointed, and may be annulled by such court at its pleasure; and the clerks shall be responsible for the official acts and negligence of all such deputies. (26 U. S. Stats. 68.)

SOUTH DAKOTA.—That the clerk of the circuit court shall reside at Sioux Falls, and he may appoint a deputy to reside and have an office at Pierre and Deadwood. (26 U. S. Stats. 15.)

TENNESSEE—*In eastern district.*—And the said clerks and marshals shall each appoint a deputy to reside and keep their offices in the city of Chattanooga, and who shall, in the absence of their

principals, do and perform all the duties appertaining to their offices respectively. (21 U. S. Stats. 175.)

Western district.—The clerks of the circuit and district courts for said district, and the marshal of the district, shall each appoint a deputy of their respective courts at the place in the eastern division of said district where their said courts are required to be held, who shall, in the absence of the clerk, exercise all the powers and perform all the duties of clerk within said division; *provided*, that the appointments of such deputies shall be approved by the court for which they shall be respectively appointed, and may be annulled by such court at its pleasure. (20 U. S. Stats. 206, 235. See Rev. Stats. secs. 547, 558, 634.)

TEXAS.—That two deputies shall be appointed by the clerk of the northern district, one of whom shall reside at each of the other places designated for holding the courts. (20 U. S. Stats. 320, sec. 9.) That there shall be appointed, in the manner provided by law, a deputy clerk, who shall keep his office at the city of El Paso. (23 U. S. Stats. 35.) That there shall be appointed, in the manner required by law, a deputy clerk who shall keep his office at the city of Fort Worth, and also one who shall keep his office at the city of Abilene, and also one who shall keep his office at the city of San Angelo. (29 U. S. Stats. 457.) That the clerks of the circuit and district courts for said district shall maintain an office in charge of themselves or a deputy at said city of Beaumont, which shall be

kept open at all times for the transaction of the business of said division. (29 U. S. Stats. 516.) Deputy at Laredo. (30 U. S. Stats.)

UTAH.—That the clerks of the circuit and district courts for said district shall each appoint a deputy clerk at each of the places where their respective courts are required to be held in the divisions of the district, except in the division where such clerk shall himself reside, each of which deputies shall, in the absence of the clerk, exercise all the powers and perform all the duties of the clerk within the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the court for which they shall have been respectively appointed, and may be annulled by such court at its pleasure, and the clerks shall be responsible for the official acts and negligence of all such deputies. (29 U. S. Stats. 620.)

WASHINGTON—*In divisions of district.*—That the clerk of the circuit and district courts for said district shall each appoint a deputy clerk at the place where their respective courts are required to be held in the division of the district in which such clerk shall not himself reside, each of whom shall, in the absence of the clerk, exercise all the powers and perform all the duties of the clerk within the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the court for which they shall have been respectively appointed, and may be annulled by such court at its pleasure, and the clerks shall be responsible for the official acts and

negligence of all such deputies. (26 U. S. Stats. 45.)

WYOMING.—The circuit and district courts of said district, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. (26 U. S. Stats. 225.)

§ 46 (561). Compensation of deputy clerks.—The compensation of deputies of the clerks of the district courts shall be paid by the clerks, respectively, and allowed in the same manner that other expenses of the clerks' offices are paid and allowed. (Rev. Stats. sec. 561.)

§ 46a. District court commissioners, appointment.—It shall be the duty of the district court of each judicial district to appoint such number of persons, to be known as United States commissioners, at such places in the district as may be designated by the district court, which United States commissioners shall have the same powers and perform the same duties as are now imposed upon commissioners of the circuit courts. The appointment of such United States commissioners shall be entered of record in the district courts, and notice thereof at once given by the clerk to the attorney general. That such United States commissioners shall hold their offices, respectively, for the term of four years, but they shall at any time be subject to removal by the district court, and no person shall at any time be a clerk or deputy clerk of the

United States court and a United States commissioner without the approval of the attorney general. (29 U. S. Stats. 184.)

§ 46b. District court commissioners, powers, duties, etc.—That all acts and parts of acts applicable to commissioners of the circuit courts, except as to appointment and fees, shall be applicable to United States commissioners appointed under this act. Warrants of arrest for violations of internal revenue laws may be issued by United States commissioners upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector or deputy collector of internal revenue, or revenue agent, or private citizen, but no such warrant of arrest shall be issued upon the sworn complaint of a private citizen unless first approved in writing by a United States district attorney. That United States commissioners and all clerks of United States courts are hereby authorized to administer oaths. * * * * Such commissioners shall keep a complete record of all proceedings before them in criminal cases, in a well-bound book, which record book shall be delivered to and preserved by the clerk of the district court for such district on the death, resignation, removal or expiration of term of the commissioner, for which record the commissioner shall receive no compensation. (29 U. S. Stats. 184, 185.)

Powers of commissioners.—An order of deportation of a Chinese person may be made by a commissioner. (In re Tsu Tse Mee, 81 Fed. Rep. 562.) A United States commissioner is "a United States

judge" within the meaning of section 6 of the Chinese Exclusion Act of May 5, 1892. (In re Wong Fock, 81 Fed. Rep. 558; In re Tsu Tse Mee, 81 Fed. Rep. 562.) A United States commissioner has no jurisdiction to order a Chinaman, found to be unlawfully within the United States, imprisoned at hard labor for thirty days prior to the time fixed for his deportation. (In re Ah Yuk, 53 Fed. Rep. 781.) A United States commissioner has no power to call upon a jailer of a State jail in which prisoners, under sentence or awaiting trial by the Federal courts, are confined, to perform any service. (Saunders v. United States, 73 Fed. Rep. 782.)

§ 46c. District court commissioners, who are disqualified for.—That no marshal or deputy marshal, attorney or assistant attorney of any district, jury commissioner, clerk of marshal, no bailiff, crier, juror, janitor of any government building, nor any civil or military employee of the government, except as in this act provided [the clerk or his deputy may be commissioner with the consent of attorney general], and no clerk or employee of any United States justice or judge, shall have, hold or exercise the duties of the United States commissioner. (29 U. S. Stats. 184.)

§ 47 (562). Records, where kept.—The records of a district court shall be kept at the place where the court is held. Where it is held at more than one place in any district, and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge. (Rev. Stats. sec. 562.)

CALIFORNIA.—The clerks of the circuit and district courts of the present district of California shall retain the records and files of said courts at the city of San Francisco, and do and perform all the duties appertaining to the said offices, respectively, within said northern district, except as hereinafter provided; and all process returnable to or proceedings noticed for any term of the present circuit or district court of California shall be deemed returnable to the next term of said courts, respectively, in the said northern district, as fixed by this act. (24 U. S. Stats. 308.)

Transcripts of records, etc.—That either of the clerks of the circuit and district courts for the said northern district of California is hereby authorized, at the request of the district judge of said southern district, and at the cost of the parties requiring the same, to make transcripts of any of the records, files, or papers of the district and circuit courts of the United States remaining in the office of the clerks of the present district of California, and of all matters or proceedings which relate to or concern liens upon or titles to real estate situated in said southern district; and such transcripts, when so made by either of said clerks, shall be certified to be true and correct by the clerk making the same, and the same, when so made and certified, and filed in the proper court, shall constitute the record in such court, and shall be evidence in all courts and places equally with said originals. (24 U. S. Stats. 308.)

COLORADO.—The records of the district court

in the several divisions of the district of Colorado, as declared by the act approved February fifteenth, eighteen hundred and seventy-nine, entitled "An act to provide for holding terms of the circuit and district courts in the district of Colorado," shall be kept and retained in the clerk's office of the district court of Colorado; and the district court sitting at the places mentioned in this act, respectively, shall have jurisdiction of actions, civil and criminal, heretofore brought and now pending at any such place. (21 U. S. Stats. 76.)

INDIANA.—Each deputy shall keep in his office full records of all actions and proceedings in the district court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other district courts in like cases. (Sec. 559.) Deputy clerks and marshals at Fort Wayne shall keep in their offices such records as appertain to their offices, and said deputy clerk shall keep in his office full records of all actions, proceedings, and judgments in said courts. (21 U. S. Stats. 511.) Records to be kept at Hammond. (30 U. S. Stats.)

MICHIGAN—*At Marquette.*—The deputy clerk appointed for the circuit and district court held at Marquette shall keep in his office full records of all actions and proceedings in the said circuit and district courts for the northern division of said district held at that place, and shall have the same power to issue all processes from the said courts and perform any other duty that is or may be given to the clerks of other circuit and district courts in like cases. (20 U. S. Stats. 175.)

At Bay City.—All the records, files, and papers relating to proceedings had by or before either of said courts when sitting at Bay City, as aforesaid, shall be kept and retained in the office of the clerk of such court at Detroit, in said district, except when actually in use by or before such court, and except when otherwise ordered by such court or a judge thereof. Each of said courts is authorized and required to make all such rules and regulations relative to the summoning of grand and petit jurors to attend upon the sessions of such courts at Bay City, and relative to matters of practice therein, that may from time to time be deemed necessary. (24 U. S. Stats. 423.)

§ 48. **Indices to records.**—The clerks of several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public. (25 U. S. Stats. 357.)

CHAPTER IV.

DISTRICT COURTS—JURISDICTION.

- § 49. Jurisdiction.
- § 49a. Jurisdiction in bankruptcy cases.
- § 50. Offenses committed in places ceded to United States.
- § 50a. Jurisdiction of offenses committed in places under exclusive Federal control.
- § 50b. Violation of act regulating sealing.
- § 51. Offenses committed upon Great Lakes.
- § 52. Jurisdiction of offenses committed on Great Lakes.
- § 53. Injury to persons or property, or deprivation of rights under civil-rights acts.
- § 54. Jurisdiction concurrent with court of claims.
- § 55. Mandamus to compel performance of duty by carrier.
- § 56. Seizure for forfeiture.
- § 56a. Seizures of obscene books, pictures, etc., imported.
- § 57. Prize causes after appeal.
- § 58. Trial of issues of fact.
- § 59. Jurisdiction in cases transferred from territorial courts.
- § 60. Commissioners to administer oaths to appraisers.
- § 61. Circuit court powers of certain district courts abolished.

§ 49 (563). Jurisdiction.—The district courts shall have jurisdiction as follows:

First. Of all *crimes and offenses* cognizable under the authority of the United States, committed

within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, title "Crimes."

Second. Of all cases arising under any act for the punishment of *piracy*, when no circuit court is held in the district of such court.

Third. Of all suits for *penalties and forfeitures* incurred under any law of the United States.

Fourth. Of all *suits at common law* brought by *the United States*, or by any officer thereof, authorized by law to sue.

Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any *internal revenue tax*, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title or interest.

Sixth. Of all suits for the recovery of any *forfeiture* or damages under section thirty-four hundred and ninety, title, "Debts due by or to the United States"; and such suits may be tried and determined by any district court within whose jurisdictional limits the defendant may be found.

Seventh. Of all causes of actions arising under the postal *laws* of the United States.

Eighth. Of all civil causes of *admiralty* and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all *seizures on land* and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall

be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts, and shall have original and exclusive cognizance of all prizes brought into the United States, except as provided in paragraph six of section six hundred and twenty-nine.

Ninth. Of all proceedings for the condemnation of property taken as *prize*, in pursuance of section fifty-three hundred and eight, title, "Insurrection."

Tenth. Of all suits by the assignee of any *debenture* for drawback of duties, issued under any law for the collection of duties, against the person for whom such debenture was originally granted, or against any indorser thereof to recover the amount of such debenture.

Eleventh. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any *injury* to his person or property, or of the deprivation of any right or privilege of a citizen of the United States *by* an act done in furtherance of any *conspiracy* mentioned in section nineteen hundred and eighty-five, title, "Civil rights."

Twelfth. Of all suits at law or in equity authorized by law to be brought by any person to redress the *deprivation* under color of any law, ordinance, regulation, custom, or usage of any State, *of any right*, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the jurisdiction thereof.

Thirteenth. Of all suits *to recover possession of any office*, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude; *provided*, that such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the rights of citizens of the United States to vote in all the States.

Fourteenth. Of all proceedings by the *writ of quo warranto*, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States.

Fifteenth. Of all suits by or against any association established under any law providing for *national banking associations* within the district for which the court is held.

Sixteenth. Of all suits brought by any *alien* for a tort only in violation of the law of nations, or of a treaty of the United States.

Seventeenth. Of all suits against *consuls* or vice-consuls, except for offenses above the description aforesaid.

Eighteenth. The district courts are constituted courts of *bankruptcy*, and shall have in their respective districts original jurisdiction in all matters and proceedings in bankruptcy. (Rev. Stats. sec. 563.)

Jurisdiction in general.—The jurisdiction of the United States district courts is derived from the Constitution and laws of the United States. (National Bank v. Sebastian Co., 5 Dill. 414; Fed. Cas. No. 10040.) It is limited but not inferior. They have only such powers as are conferred by statutes, or such as are necessarily implied. (U. S. v. Ta-wan-ga-ca, Hemp. 304; Fed. Cas. No. 16435.) All presumptions indulged in favor of courts of general jurisdiction are equally extended to them. (Thompson v. Lyle, 3 Watts & S. 166.) A decision of a court of exclusive jurisdiction is binding on every other court in which the same subject-matter is incidentally brought. (Gelston v. Hoyt, 3 Wheat. 246.) Where a court has jurisdiction it has the power to determine the form of the remedy, and error on that point cannot be urged against the jurisdiction in a collateral proceeding. (Chemung Bank v. Judson, 8 N. Y. 254.) And the court which once obtains jurisdiction of the parties may retain it and afford all relief. (Ward v. Todd, 103 U. S. 327.) But consent of parties will not confer jurisdiction. (Cutler v. Rae, 7 How. 729.) The jurisdiction of the district court cannot be affected by State legislation. (Smith v. Railroad Co., 99 U. S. 398.) But when a State gives a right or a remedy, the jurisdiction as between the law side and the equity side is determined by the character of the case. (Van Norden v. Morton, 99 U. S. 378.) The district court has jurisdiction to enforce the personal liability of foreign corporations. (Dyer v. Nat. St. Nav. Co., 14 Blatchf. 483; Fed. Cas. No. 4225.) Sit-

ting in equity it has the power to restrain the enforcement of a decree made while sitting in admiralty. (*Dutcher v. Woodhull*, 7 Ben. 313; Fed. Cas. No. 4204.) They have power to devise modes of proceedings where the Supreme Court has not already done so. (*The Epsilon*, 6 Ben. 378; Fed. Cas. No. 4506.) Consent will not confer jurisdiction, especially where the rights of third parties are affected. (*Winchester v. U. S.*, 14 Ct. of Cl. 13.) But they have no jurisdiction over a claim by a court crier for services which has been presented to and rejected by the comptroller of the treasury. (*Preston v. U. S.*, 37 Fed. Rep. 417.) Where an attempt is made by affidavit, on which a motion is founded, to confer jurisdiction to which a court is not entitled, it is a gross contempt of court. (*Eberly v. Moore*, 24 How. 147.)

Clause 1—Crimes and offenses.—Courts of the United States have no jurisdiction over offenses not made punishable by the Constitution, laws or treaties of the United States. (*Pettibone v. United States*, 148 U. S. 197.) The offender cannot be tried out of the district in which the offense was committed. (*Ex parte Bollman*, 4 Cranch, 75; *U. S. v. Bird*, 1 Sprague, 299; Fed. Cas. No. 14597.) The district court has no jurisdiction of an offense cognizable by a navy court-martial. (*U. S. v. Mackenzie*, 1 N. Y. Leg. Obs. 371; Fed. Cas. No. 15691.) It has jurisdiction over a prosecution for forgery (*U. S. v. Randolph*, 1 Pittsb. 24; Fed. Cas. No. 16120), but it has no jurisdiction over criminal cases in admiralty except such as is granted by particular acts of Congress. (*U. S. v. Wilson*, 3 Blatchf. 435; Fed. Cas. No. 16731; *U. S. v. New Bedford Bridge*, 1 Wood. & M. 401; Fed. Cas. No. 15867; *Corfield v. Coryell*, 4 Wash. C. C. 371; Fed. Cas. No. 3230.) Their criminal juris-

diction is purely statutory, and the designation of the place of imprisonment not being made part of the judgment, the court may, after sentence, and in the absence of the defendant, but during the same session, enter an order modifying the sentence by changing the place of confinement. (Ex parte Waterman, Dist. Ct. N. Y., 33 Fed. Rep. 29.) Clause 1 does not confer jurisdiction of any crime not otherwise defined by some statute of the United States. (U. S. v. Lewis, 36 Fed. Rep. 449.) It is not within the power of the United States to punish for a conspiracy to murder within a State, unless the murder was in violation of the United States statute. (United States v. Lancaster, 44 Fed. Rep. 896.) The United States courts have no jurisdiction of the offense of assault with intent to commit rape, committed by an Indian upon an Indian woman, both residing upon an Indian reservation. (United States v. King, 81 Fed. Rep. 625.) The authority to punish for manslaughter on the navigable waters of the United States is found in the constitutional grant of power to Congress to regulate commerce among the several States. (United States v. Beacham, 29 Fed. Rep. 284.) The same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the State and Federal governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each. (United States v. Marigold, 9 How. 560, 569; Fox v. Ohio, 5 How. 410, 433; Moore v. Illinois, 14 How. 13, 19; Ex parte Siebold, 100 U. S. 371, 390; Cross v. State of North Carolina, 132 U. S. 132.) The crime of forgery against the State law could not be excused or obliterated by committing another and distinct crime against the United States, although it is an offense of which the United States courts have exclusive jurisdiction. (Cross v. North

Carolina, 132 U. S. 131, 33 l. ed. 287.) The Congress shall have power to provide for the punishment of counterfeiting the securities and current coin of the United States. (U. S. Const., art. 1, sec. 8, cl. 6. See *Fox v State*, 5 How. 410; *United States v. Marigold*, 9 How. 560; *Ex parte Houghton*, 8 Fed. Rep. 897.) The United States district court has jurisdiction to discharge a person held for trial by a State court, where he is restrained of his liberty in violation of the Constitution and laws of the United States. (*United States v. Chapel*, 54 Fed. Rep. 140.)

Crimes committed on the high seas.—To constitute the crime of murder on the high seas, the mortal stroke must be given and the death happen there. (*Ball v. U. S.*, 140 U. S. 118. See *United States v. Armstrong*, 2 Curt. 446; Fed. Cas. No. 14467; *United States v. Davis*, 2 Sumn. 482; Fed. Cas. No. 14932.) The United States district courts have cognizance of torts committed on the high seas when the parties or the vessels are found within their jurisdiction; and may in their discretion entertain jurisdiction in the case of a controversy between foreigners. (*The Noddleburn*, 30 Fed. Rep. 142.) An assault committed on board a merchant vessel in a harbor within the territorial jurisdiction of a foreign country is within the jurisdiction of the courts of that country; and if a member of the crew is there convicted the judgment will be conclusive here. (*The Lyman D. Foster*, 85 Fed. Rep. 987.) Under the act of March 3, 1825, where a prisoner who had committed an assault with a deadly weapon, upon the high seas, was brought first into the eastern district of New York, but was first delivered to the marshal of the southern district, the latter district had jurisdiction. (*U. S. v. Arwo*, 19 Wall. 486.) Larceny committed on board a vessel lying about a half mile from the

mouth of a river emptying into Lake Michigan, is not within the act of Congress, extending criminal jurisdiction of Federal courts to the great lakes, and their connecting waters. (Act of Sept. 4th, 1890; U. S. v. Rogers, 46 Fed. Rep. 1.) Constructive larceny within the jurisdiction of a court, growing out of the possession of property stolen in another jurisdiction, does not apply to Federal courts, their jurisdiction being that only which is given by statute. (U. S. v. Rogers, 46 Fed. Rep. 1.) The jurisdiction extends to assaults with a dangerous weapon committed upon an American vessel at any point on the high seas, or arm of the sea, or any river, haven, creek, or basin, or bay, out of the jurisdiction of any particular State, and within the jurisdiction of the United States. (United States v. Beyer, 31 Fed. Rep. 35.) It is limited to the high seas and to the waters connected immediately with them. (Ex parte Byers, 32 Fed. Rep. 404.)

Clause 2—Piracy.—Robbery committed on the high seas is piracy, and the circuit courts of the United States have jurisdiction thereof. (United States v. Palmer, 3 Wheat. 610. See *The Palmyra*, 12 Wheat. 1.) The Congress shall have power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. (U. S. Const. art. 1, sec. 8, cl. 10. See *The Estrella*, 4 Wheat, 298; United States v. Smith, 5 Wheat. 153; United States v. Pirates, 5 Wheat. 184; United States v. Holmes, 5 Wheat. 412; *Henfield's Case*, Whart. St. Tri. 49; Fed. Cas. No. 6360; United States v. Chapels, 2 Wheel. Cr. Cas. 218.)

Clause 3—Penalties and forfeitures.—District courts have exclusive jurisdiction over proceedings in rem to enforce the forfeiture (*The Cassins*, 2 Dall. 365), and the question whether the forfeiture has been

actually incurred belongs exclusively to the Federal courts. (*Slocum v. Mayberry*, 2 Wheat. 1; *Gelston v. Hoyt*, 3 Wheat. 246.) But if there is no act of Congress authorizing the seizure, the owner may sue in replevin in a State court to recover it. (*Slocum v. Mayberry*, 2 Wheat. 1.) "Suits for penalties and forfeitures" means civil actions for the recovery of the penalty and forfeiture. (*U. S. v. Mann*, 1 Gall. 177; *Fed. Cas. No. 15718*.) A suit is "the following of a person," and cannot be applied to seizures or proceedings in rem. (*The Little Ann*, 1 Paine, 40; *Fed. Cas. No. 8397*.) The district courts have jurisdiction in case of a condemnation against an article for violation of the revenue law (*Buchanan v. Biggs*, 2 Yeates, 232); or for the illegal fitting out of a vessel (*Ketland v. The Cassius*, 2 Dall. 365; *Fed. Cas. No. 7743*); or of seizures under the law of imports (*Hall v. Warren*, 2 McLean, 332; *Fed. Cas. No. 5952*); or for overcrowding passengers (*The Laura M. Starin*, 11 Fed. Rep. 177; *The Arctic*, id.; *The Laura*, 5 Fed. Rep. 133); or for the enforcement of the revenue (*The Joshua Leviness*, 9 Ben. 339; *Fed. Cas. No. 7549*); or for making false invoices (*U. S. v. Mooney*, 11 Fed. Rep. 476); and its decision is conclusive that a forfeiture has been incurred. (*Gelston v. Hoyt*, 3 Wheat. 246.) The admiralty has no jurisdiction in actions to recover fines and penalties (*The Queen*, 4 Ben. 237; *Fed. Cas. No. 16107*; *The Waterloo*, Blatchf. & H. 114; *Fed. Cas. No. 17257*; *The Irma*, 12 Int. Rev. Rec. 42; *Fed. Cas. No. 15444*; *Knowlton v. Boss*, 1 Sprague, 163; *Fed. Cas. No. 7901*), unless made a lien on the vessel by statute. (*The Lewellen*, 4 Biss. 156; *Fed. Cas. No. 8307*.) Fine and imprisonment are inflicted as the result of a criminal conviction. (*In re Leszynsky*, 16 Blatchf. 14; *Fed. Cas. No. 8279*.) A judgment upon a forfeited recognizance of bail is absolute, and is not a judgment nisi. (*U. S. v. Winstead*, 12 Fed. Rep. 50.) In

revenue cases it extends only to seizures for forfeitures under duty laws. (U. S. v. Boxes of Pipes, 2 Abb. U. S. 500; Fed. Cas. No. 15116.) It has jurisdiction in rem against a vessel to enforce a penalty for smuggling, and may proceed without a jury. (U. S. v. The Queen, 4 Ben. 237; Fed. Cas. No. 16107. See U. S. v. Boxes of Opium, 12 Fed. Rep. 402; U. S. v. The Henrietta Esch, 12 Fed. Rep. 483.) It is not necessary to attach the vessel to enforce the statutory lien for a penalty. (Hatch v. The Boston, 3 Fed. Rep. 807.) The exclusive jurisdiction of district courts over suits for the recovery of penalties and forfeitures under the custom laws is not affected by the act of 1875. (U. S. v. Mooney, 116 U. S. 104; affirming S. C. 11 Fed. Rep. 476.) The United States district courts have jurisdiction over actions to recover penalties and forfeitures for a violation of the act of February 26, 1885, prohibiting the importation of foreign laborers (Lees v. United States, 150 U. S. 476; United States v. Mexican Nat. R. R. Co., 40 Fed. Rep. 769.) The language of the 9th section of the judiciary act of 1789 was adopted in section 563 of the Rev. Stats. (First Nat. Bank of Charlotte v. Morgan, 132 U. S. 141.) A mistake of law will not excuse a forfeiture in cases where a party has violated provisions of the revenue laws. (Barlow v. U. S., 7 Peters, 404.)

Clause 4—Suits at common law brought by the United States or its officers.—The district courts have jurisdiction over actions at common law (Parsons v. Bedford, 3 Peters, 447). by United States officers. (Duncan v. U. S., 7 Peters, 450.) So a receiver of a national bank is an officer of the United States. (Platt v. Beach, 2 Ben. 303; Fed. Cas. No. 11215; Stanton v. Wilkeson, 8 Ben. 357; Fed. Cas. No. 13299.) Persons holding office under any act of Congress are officers within this clause. (Platt v. Beach, 2 Ben.

303; Fed. Cas. No. 11215.) An action of debt to recover a penalty brought in the name of the United States is an action at common law. (U. S. v. Bougher, 6 McLean, 277; Fed. Cas. No. 14627; Jacob v. U. S., 1 Brock, 520; Fed. Cas. No. 7157.) So of an information for conversion of property (U. S. v. Stevenson, 1 Abb. U. S. 495; Fed. Cas. No. 16395); and an action on a note held by the United States (U. S. v. Greene, 4 Mason, 427; Fed. Cas. No. 15258), or an action by a postmaster-general for breach of a bond by a postmaster is within this subdivision. (Postmaster-General v. Early, 12 Wheat. 136.) The fourth subdivision of this section includes an action of trover brought by a United States marshal to recover money held by him in that capacity, lost and found by the defendant. (Henry v. Sowles, Dist. Ct. Vt. 28 Fed. Rep. 481.) District courts have no jurisdiction on the ground of diverse citizenship. They have no jurisdiction of an action on a promissory note brought by a national bank in a district other than that in which the bank is situated. (Farmers' Nat. Bk. v. McElhinney, 42 Fed. Rep. 801.) But the jurisdiction of these courts over an action to enforce the liability of a stockholder of an insolvent bank brought by a receiver appointed by the comptroller of the currency, such jurisdiction is not taken away by the Removal Act of 1888. (Stephens v. Bernays, 41 Fed. Rep. 401.) When the United States have a right, under a State statute, to sue in the name of the State upon the official bond of a sheriff to recover damages for negligently allowing the escape of a Federal prisoner, such action is within the jurisdiction of the district court. (State of Tennessee v. Hill, 22 U. S. App. 1; 60 Fed. Rep. 1005.)

Clause 7—Actions arising under postal laws.—The courts of the district in which a letter constituting an offense is received, has jurisdiction of the

offense. (In re Palliser, 136 U. S. 257.) The sender has also been held punishable at the place where he mails the letter. (United States v. Worrall, 2 U. S., 2 Dall. 384; Fed. Cas. No. 16766; United States v. Bixford, 4 Blatchf. 337; Fed. Cas. No. 14591; Rex v. Williams, 2 Campb. 506; Rex v. Burdett, 3 Barn. & Ald. 717, and 4 Barn. & Ald. 95; Perkins's Case, 2 Lew. C. C. 150; Reg. v. Cooke, 1 F. & F. 64; Reg. v. Holmes, L. R. 12 Q. B. Div. 23; 15 Cox Crim. Cas. 343; In re Palliser, 136 U. S. 257.) But it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, whether the unlawfulness of the communication through the post-office consists in its being a threatening letter (Rex v. Girdwood, 1 Leach, 142; S. C. 2 East P. C. 1120; Esser's Case, 2 East P. C. 1125), or a libel (Rex v. Johnson, 7 East, 65; S. C. 3 J. P. Smith, 94; Rex v. Burdett, 4 Barn. & Ald. 95, 136. 150, 170, 184; Com. v. Blanding, 3 Pick. 304; Re Buell, 3 Dill. 116, 122; Fed. Cas. No. 2102), or a false pretense or fraudulent representation. (Reg. v. Leech, Dearsly, 642; S. C. 7 Cox Crim. Cas. 100; Reg. v. Rogers, L. R. 3 Q. B. Div. 28; S. C. 14 Cox Crim. Cas. 22; People v. Rathbun, 21 Wend. 509; People v. Adams, 3 Denio, 190, and 1 N. Y. 173; Foute v. State, 15 Lea, 712; In re Palliser, 136 U. S. 257.)

Clause 8—Civil causes, admiralty and maritime—admiralty jurisdiction.—The jurisdiction of the district court, and the law governing its exercise, are to be sought in the general maritime law. (The Catharina, 1 Pet. Adm. 104; Fed. Cas. No. 13949; The Seneca, Gilp. 10; Fed. Cas. No. 3650.) "To all cases of admiralty and maritime jurisdiction" refers to the general system of maritime law prevailing before the

adoption of the Constitution. (The Lottawanna, 21 Wall. 558.) The jurisdiction is founded on the subject-matter, and not on the citizenship of the parties (Peyroux v. Howard, 7 Peters, 324; The Calisto, 2 Ware, 30; Fed. Cas. No. 2316; The Emma, 3 Cent. L. J. 285; Fed. Cas. No. 18218); and so far as it relates to the subject-matter, it means that maritime law which had been and was being exercised in this country prior to and at the adoption of the Constitution (Cope v. Vallette Dry Dock, 4 Woods, 265; 16 Fed. Rep. 924); but only so far as adopted by the laws and usages of the country. (The Lottawanna, 21 Wall. 558; Norwich Co. v. Wright, 13 Wall. 116; Steam Nav. Co. v. Dyer, 4 Morr. Trans. 277.) The nature and extent of the admiralty jurisdiction must be determined by the laws of Congress, the decisions of the Supreme Court, and by usages prevailing in the courts of the State when the Federal Constitution was adopted (Ex parte Easton, 95 U. S. 68); yet the practice of the colonial admiralty courts is high authority upon the extent of the jurisdiction. (Cunningham v. Hall, 1 Cliff. 43; Fed. Cas. No. 3481; S. C. 1 Sprague, 404; Fed. Cas. No. 3482; The Kate Tremaine, 5 Ben. 60; Fed. Cas. No. 7622.) Courts of admiralty act upon enlarged principles of equity rather than the strict rules of the common law. (O'Brien v. Miller, 168 U. S. 287.) With reference to locality, it comprises the navigable waters of the nation as well as the high seas. (Cope v. Vallette Dry Dock, 4 Woods, 265; 16 Fed. Rep. 924.) The difference between admiralty and maritime jurisdiction is merely nominal (The Sandwich, 1 Pet. Adm. 233; Fed. Cas. No. 13409), and courts of every nation will administer justice according to their laws, unless a different law is shown to apply, and this rule applies to transactions on the high seas. (Steam Nav. Co. v. Dyer, 4 Morr. Trans. 277.) The

grant of admiralty jurisdiction is therefore not limited by what were cases of admiralty in England when the Constitution was adopted. (*Waring v. Clarke*, 5 How. 441; *New Jersey S. N. Co. v. Merchants' Bank*, 6 How. 344; *The Gold Hunter*, Blatchf. & H. 300; *Fed. Cas. No. 5513*; *De Lovio v. Bort*, 2 Gall. 398; *Fed. Cas. No. 3776*; *The Seneca*, Gilp. 10; *Fed. Cas. No. 3650*; *Kynoch v. Ives*, Newb. 205; *Fed. Cas. No. 7958*; *The Volunteer*, 1 Sum. 551; *Fed. Cas. No. 16991*; *Steele v. Thacher*, 1 Ware, 91; *Fed. Cas. No. 13348*; *The Huntress*, 2 Ware, 89; *Fed. Cas. No. 6914*.) The jurisdiction of the district court in admiralty and maritime law is exclusive, and a State law cannot confer it on State courts, as such legislation is in violation of section 711 of the Revised Statutes (*Stewart v. Potomac Ferry Co.*, 5 Hughes, 372; 12 Fed. Rep. 296); nor can a State confer jurisdiction on the admiralty courts, nor enlarge the jurisdiction. (*Orleans v. The Phoebus*, 11 Peters, 175; *The Hornet*, Crabbe, 426; *Fed. Cas. No. 1640*; *The Richard Busteed*, 1 Sprague, 441; *Fed. Cas. No. 11764*; *The Chusan*, 2 Story, 455; *Fed. Cas. No. 2717*; *The Mary Stewart*, 5 Hughes, 312; 10 Fed. Rep. 137.) So it cannot confer jurisdiction over a contract not maritime in its nature (*Roach v. Chapman*, 22 How. 129; *The Harriet*, Olcott, 229; *Fed. Cas. No. 6097*); and jurisdiction once acquired in admiralty cannot be divested by acts subsequently cognizable in the law tribunals. (*Amer. Ins. Co. v. Johnson*, Blatchf. & H. 9; *Fed. Cas. No. 303*.) District courts sitting in admiralty are courts of superior jurisdiction, and every intendment is in favor of their decrees, so that where it appears that the court has jurisdiction of the subject-matter and of the person the decree is not open to attack collaterally. (*Ex parte Cooper*, 143 U. S. 472.)

Jurisdiction, extent of.—The admiralty jurisdiction extends wherever ships float, and navigation successfully aids commerce. (*Hine v. The Trevor*, 4 Wall. 555.) It embraces bays, harbors, and inlets, although they are within the territorial limits of a State (*The Wave v. Hyer*, Blatchf. & H. 235; Fed. Cas. No. 17297; *The Martha Anne*, Olcott, 18; Fed. Cas. No. 9146), and ports and havens as a portion of the high seas. (*Amer. Ins. Co. v. Johnson*, Blatchf. & H. 9; Fed. Cas. No. 303; *Borden v. Hiern*, Blatchf. & H. 293; Fed. Cas. No. 1655; *The Lotty*, Olcott, 329; Fed. Cas. No. 8524.) It extends to all public rivers as far as they are navigable (*Martin v. Acker*, Blatchf. & H. 279; Fed. Cas. No. 9155; *The Jenny Lind*, Newb. 443; Fed. Cas. No. 17723; *Seven Coal Barges*, 2 Binn. 297; Fed. Cas. No. 12677; *The Ida Stockdale*, 22 Pitts. L. J. 9; Fed. Cas. No. 3052), and navigable waters, though they may be within the body of the county. (*Waring v. Clarke*, 5 How. 441; *The New World v. King*, 16 How. 469; *Nelson v. Leland*, 22 How. 48; *Philadelphia etc. R. R. Co. v. Towboat Co.*, 23 How. 209; *Jackson v. The Magnolia*, 20 How. 296; *The Commerce*, 1 Black, 574; *Montieth v. Kirkpatrick*, 3 Blatchf. 279; Fed. Cas. No. 9721; *Robert v. Skofield*, 3 Ware, 184; Fed. Cas. No. 11917; *Thomas v. Gray*, Blatchf. & H. 493; Fed. Cas. No. 13898; *The Thomas Scattergood*, Gilp. 1; Fed. Cas. No. 11106.) The jurisdiction depends upon the navigability of the water, and not upon the ebb and flow of the tide. (*Genesee Chief v. Fitzhugh*, 12 How. 443; *Fretz v. Bull*, 12 How. 466; *Jackson v. The Magnolia*, 20 How. 296; *contra*, *Orleans v. The Phoebe*, 11 Peters, 175; *The Thomas Jefferson*, 10 Wheat. 428.) So it extends to interior navigable rivers of the United States (*Jackson v. The Magnolia*, 20 How. 296; *Hine v. Trevor*, 4 Wall. 555; *Cheeseman v. Two Ferryboats*, 2 Bond. 363; Fed. Cas. No. 2633; *McGinnis v. Pontiac*, 5 Mc-

Lean, 359; Fed. Cas. No. 8801; *The Bacon*, Newb. 274; Fed. Cas. No. 4232), and although they are wholly within the boundary of a State (*Jackson v. The Magnolia*, 20 How. 296; *Taylor v. Harwood*, Taney, 437; Fed. Cas. No. 13794); but not necessarily over every stream whose occasional floods may suffice to float a steamboat. (*Jones v. the Coal Barges*, 3 Wall. Jr. 53; Fed. Cas. No. 7458.) The district court takes cognizance of all civil causes of admiralty jurisdiction upon the lakes and waters connecting them, the same as upon the high seas and bays, and rivers navigable from the sea. (*The Genesee Chief v. Fitzhugh*, 12 How. 443; *The Eagle*, 8 Wall. 15.) Those waters are navigable in law which are navigable in fact (*The Montello*, 11 Wall. 411; *the General Cass*, 1 Brown, 334; Fed. Cas. No. 5307), and the capability of use by the public for purposes of transportation and commerce is the true criterion of the navigability of a river, and not the extent and manner of that use. (*The Montello*, 11 Wall. 411.) A river is navigable when it forms by itself, or by connection with other waters, a continued highway over which commerce may be carried on (11 Wall. 411), and the liability to temporary interruptions does not destroy its character as a navigable stream. (*Nelson v. Leland*, 22 How. 48; *Cheeseeman v. Two Ferryboats* 2 Bond. 363; Fed. Cas. 2633.) An artificial canal publicly used for purposes of commerce is navigable water within the meaning of that term as giving jurisdiction in admiralty. (*Malony v. City of Milwaukee*, 1 Fed. Rep. 611; *The Oler*, 2 Hughes, 12; Fed. Cas. No. 10485; *The Avon*, 1 Brown, 170; Fed. Cas. No. 680.)

How far it is exclusive and independent of State courts.—In the exercise of their admiralty and maritime jurisdiction the Federal courts are governed solely by the legislation of Congress and the general

principles of maritime law, and are not bound by State statutes. (*New Zealand Ins. Co. v. Earnmoor S. S. Co.*, 48 U. S. App. 245; 79 Fed. Rep. 369.) The jurisdiction of the district court of the United States in cases of admiralty and maritime jurisdiction is not ousted by the adoption of the State laws upon a particular subject of maritime jurisdiction, such as pilotage, by the act of Congress. (*Hobart v. Drogan*, 10 Pet. 108.) So of a State law regulating the oyster fisheries. (*Smith v. Maryland*, 18 How. 71.) State statutes which attempt to confer upon State courts a remedy for marine torts or contracts, by proceedings strictly in rem, are void. (*The Hine v. Trevor*, 4 Wall. 555.) Exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction is conferred upon the district courts. (*The Admiral*, 3 Wall. 603.) The jurisdiction to enforce a maritime lien by a proceeding in rem is exclusively in the district courts. (*Leon v. Galceran*, 11 Wall. 185; *The Glide*, 167 U. S. 606.) Not only of other Federal courts, but of the State courts also. (*The Hine v. Trevor*, 4 Wall. 555. See also *Clark v. 5500 Feet of Lumber*, 24 U. S. App. 509; 65 Fed. Rep. 236.) The entire admiralty power of the Constitution is lodged in the Federal courts, and the district courts have "exclusive original cognizance," exclusive of the State courts. (*The Belfast*, 7 Wall. 624; *The Moses Taylor*, 4 Wall. 411.) A State court having custody of a vessel through its assignee in insolvency cannot adjudicate a maritime lien without the consent of the owner thereof; the latter may pursue his remedy in rem after the State court has disposed of the vessel. (*The J. G. Chapman*, 62 Fed. Rep. 940.)

Jurisdiction in certain specified districts.—The United States district court of Alaska has jurisdiction to try and punish any inhabitant of the district

for the crime of murder or manslaughter committed by the killing of any human being therein. Alaska is not "Indian country" within the meaning of the Federal statutes. (U. S. Rev. Stats. secs. 2145, 2146; *Kie v. United States*, Cir. Ct. Or., 27 Fed. Rep. 351. See *Nelson v. United States*, 30 Fed. Rep. 112.) As to the jurisdiction of the district court in Alaska over appeals from commissioners (see *Decker v. Williams*, 73 Fed. Rep. 308). The jurisdiction of the United States district court for the western district of Arkansas, over offenses punishable by imprisonment in the penitentiary was taken away and conferred on the courts of Indian Territory. (28 U. S. Stats. 697.)

CALIFORNIA.—For the prosecution and trial of offenses committed before the passage of the act of Congress (Aug. 5, 1886) changing the district of California to the northern and southern districts of California, the original district exists. (*United States v. Benson*, 31 Fed. Rep. 896; 12 Sawyer, 477.)

ILLINOIS.—Jurisdiction as a court of admiralty of the United States district court for the northern district of Illinois. (See *Ex parte Boyer*, 109 U. S. 629.)

KANSAS.—The jurisdiction of the district court extends to offenses committed in Oklahoma, not yet a Territory, but a part of the district of Kansas. (*Re Lane*, 135 U. S. 443.) Since this decision, however, Oklahoma has been erected into a territorial government. (See 26 U. S. Stats. 87.) The district court of Maryland had jurisdiction to try an indictment for murder committed at Nevassa Island, that being the district into which the offender was first brought. (*Jones v. United States*, 137 U. S. 202.) The Federal court in Michigan had no jurisdiction of a felonious assault committed upon an American vessel in the Detroit river. (*Ex parte Byers*, 32 Fed. Rep. 404.)

MINNESOTA.—The marshal of this district has authority under proper process to arrest a vessel on the open waters of Lake Superior. (The Lindrup, 62 Fed. Rep. 851.)

NEW JERSEY.—A vessel lying at anchor between Jersey City and Manhattan Island, on the westerly side of the middle of the Hudson river, is within the territorial limits of New Jersey, and within the admiralty jurisdiction of the United States district court for that State. (The Sarah E. Kennedy, Dist. Ct. N. J. 25 Fed. Rep. 569.)

The district court for the district of New Jersey has jurisdiction of a suit in admiralty in person and against a New York corporation, where it acquires such jurisdiction by the seizure under process of attachment of a vessel belonging to such corporation, when such vessel is afloat in the Hill van Kull, between Staten Island and New Jersey, at the end of the dock at Bayonne, New Jersey, at a place at least 300 feet below low-water mark, and is fastened to said dock by means of a line running from the vessel and attached to piles on the dock. (Ex parte Devoe Mfg. Co., 108 U. S. 401.)

NEW YORK—JURISDICTION OVER WATERS NEAR CITY OF NEW YORK.—The district courts of the southern and eastern districts of New York shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, and Suffolk, and over all seizures made and all matters done in such waters; and all processes or orders issued out of either of said courts, or by any judge thereof, shall run and be executed in any part of the said waters. (Rev. Stats. sec. 542.)

WISCONSIN.—The district court for the eastern district of Wisconsin has no jurisdiction of an indictment for an assault committed on a vessel on Lake Huron within the boundary of the jurisdiction of the

eastern district of Michigan (*United States v. Peterson*, 64 Fed. Rep. 145.)

Concurrent jurisdiction.—The jurisdiction of the district court of the eastern district of New York sustained, although the vessel was found and attached in waters of the county of New York. (*The Pennsylvania*, 9 Blatchf. 451; Fed. Cas. No. 10950; S. C. 4 Ben. 257; Fed. Cas. No. 10947.) So a vessel in the basin at Jersey City, which communicates directly with the Hudson river, lying at piles about forty feet from the docks, is subject to process in the district court of the southern district of New York. (*The Argo*, 7 Ben. 304; Fed. Cas. No. 515; *The Julia Lawrence*, 9 Ben. 291; Fed. Cas. No. 15502.) The jurisdiction by this section is not extended to high-water mark on the New Jersey shore by section 541 of the Revised Statutes. (*Malony v. The City of Milwaukee*, 1 Fed. Rep. 613.) Under the act of March 5, 1825, where a prisoner who had committed an assault with a deadly weapon, upon the high seas, out of the jurisdiction of any State or district, and had been taken into custody by the master of the American vessel, was brought first into the eastern district of New York, where the vessel lay in the lower quarantine anchorage in New York harbor, and there delivered to the harbor police, and carried by them to the city of New York, where he was delivered to the marshal of the southern district of New York, and a warrant for his arrest first issued in that district, the southern district of New York had jurisdiction for the trial of the offense. (*United States v. Arwo*, 19 Wall. 486.)

OHIO, SOUTHERN DISTRICT.—The district court for the southern district of Ohio has territorial jurisdiction in admiralty in cases of seizure on the Ohio side of the Ohio river at high-water mark, and

jurisdiction over the Ohio as a navigable river. (*The Cheeseman v. Two Ferry Boats*, 2 Bond. 363; Fed. Cas. No. 2633.)

OREGON.—The jurisdiction of the district court extends to matters and things upon the Columbia river. (*The Annie M. Smull*, 2 Sawy. 226; Fed. Cas. No. 423.)

TEXAS.—The courts to be held at Paris in the division of the eastern district shall have exclusive original jurisdiction of all offenses committed against the laws of the United States within the limits of that portion of the Indian Territory attached to the eastern judicial district; of which jurisdiction is not given by this act to the court herein established in the Indian Territory. (25 U. S. Stats. 786.)

Jurisdiction governed by subject-matter.—Admiralty courts have jurisdiction in all cases of maritime obligations (*The Bark San Fernando v. Jackson*, 12 Fed. Rep. 341), over all transactions and proceedings relative to commerce and navigation. (*The Gold Hunter*, Blatchf. & H. 300; Fed. Cas. No. 5513; *The Harriet*, Olcott, 229; Fed. Cas. No. 6097.) It is not limited as to place, but is bounded only by the nature of the cause of action. (*The Sandwich*, 1 Pet. Adm. 233; Fed. Cas. No. 13409.) So where the cause is maritime in its nature the court has jurisdiction over the parties and the subject-matter (*The B. F. Woolsey*, 7 Fed. Rep. 108), and where it has cognizance of the original thing it has jurisdiction over its incidents. (*Davison v. Sealskins*, 2 Paine, 334; Fed. Cas. No. 3661; *The Betsina*, 5 Am. Law Reg. 406; Fed. Cas. No. 14236; *Kellum v. Emerson*, 2 Curt. 79; Fed. Cas. No. 7669; *L'Esperanza*, Bee, 97; Fed. Cas. No. 3277; *The Alexander McNeil*, 20 Int. Rev. Rec. 176; Fed. Cas. No. 1988; *Lee v. Thompson*, 3 Woods, 167; Fed. Cas. No. 8202; *Andrews v. Wall*, 3 How. 568; *The Goldsmith*, Newb. 123;

Fed. Cas. No. 8152; *McDonough v. Dennergy*, 3 Dall. 188; *Campbell v. Hadley*, 1 Sprague, 470; Fed. Cas. No. 2358.) When the subject-matter is maritime the contract is maritime. (*Coast Wreck Co. v. Phoenix Ins. Co.*, 7 Fed. Rep. 236; *Haller v. Fox*, 51 Fed. Rep. 298.) It must be one to be performed on navigable waters or which has relation to a maritime service. (*The Perseverance*, Blatchf. & H. 385; Fed. Cas. No. 11017.) Contracts to be performed on water are not necessarily maritime. (*The Belfast*, 7 Wall. 624.) The subject-matter must pertain to navigation or be of a maritime quality (*Cox v. Murray*, 1 Abb. Adm. 340; Fed. Cas. No. 3304), and relate to maritime affairs. (*The Farmer*, Gilp. 524; Fed. Cas. No. 13852.) The material and substantial parts making up the essence of the contract must be maritime. (*The Pacific*, 1 Blatchf. 569; Fed. Cas. No. 10643.) If the cause is an admiralty cause, jurisdiction is complete over the person as well as the ship. (*New Jersey Co. v. Merchants' Bank*, 6 How. 344; *Thatcher v. McCulloh, Olcott*, 365; Fed. Cas. No. 13862.) Whether a contract is or is not a maritime contract depends upon its subject-matter, whether it provides for maritime services, maritime transactions, or maritime casualties. (*The Paola R.*, 32 Fed. Rep. 174.) The jurisdiction embraces all maritime contracts, torts, injuries, or offenses, and it depends, in cases of contract, upon the nature of the contract, which must be purely maritime and touching rights and duties pertaining to commerce and navigation. (*People's Ferry Co. v. Beers*, 20 How. 393.) A contract to raise a wrecked vessel is sufficiently maritime in its nature to give a court of admiralty jurisdiction of a suit to recover wages due under it. (*Gilchrist v. Godman*, 79 Fed. Rep. 970.)

Actions on contracts.—The contract must have relation to transactions on navigable waters (*Wave v.*

Hyer, Blatchf. & H. 235; Fed. Cas. No. 17297; The Hornet, Crabbe, 426; Fed. Cas. No. 1640), but locality itself will not give jurisdiction if the subject-matter is not essentially maritime. (The Farmer, Gilp. 524; Fed. Cas. No. 13,852). In matters of contract its jurisdiction is co-extensive with its jurisdiction over maritime torts. (The Belfast, 7 Wall. 624. The distance of transportation or the danger of navigation is not an essential element (The Flash, 1 Abb. Adm. 67; Fed. Cas. No. 4857), yet where five-sixths of the voyage was on the waters of a canal a libel for freight in the admiralty cannot be maintained (Wallis v. Chesney, 4 Am. Law. Reg. 307; Fed. Cas. No. 17110), so if the voyage is substantially on inland non-navigable waters, the fact that at the terminus she entered navigable water will not give jurisdiction (The John B. Cole, 4 N. Y. Leg. Obs. 373; Fed. Cas. No. 16875; The Robert Morris, 1 Wall. Jr. 33; Fed. Cas. No. 8896; The Benjamin, 6 Pa. L. J. 277; Fed. Cas. No. 8582); but if the larger part of the voyage is on navigable water, jurisdiction attaches. (The Robert Morris, 1 Wall. Jr. 33; Fed. Cas. No. 8896.) It has jurisdiction over maritime contracts, although the voyage begins and ends in the same state and is prosecuted on inland waters. (The Belfast, 7 Wall. 624; The Mary Washington, 1 Abb. U. S. 1; Fed. Cas. No. 9229; The Leonard, 3 Ben. 263; Fed. Cas. No. 8256; The Elmira Shepherd, 8 Blatchf. 341; Fed. Cas. No. 4418; The Emma Johnson, 1 Cliff. 633; Fed. Cas. No. 2430; The Sarah Jane, 1 Low. 203; Fed. Cas. No. 12349; The Emma, 3 Cent. L. J. 285; Fed. Cas. No. 18218; The Otter, 12 Minn. 465; The Polly, Anth. 200; The Volunteer, Brown's Adm. 159; Fed. Cas. No. 16990; contra, Maguire v. Card, 21 How. 248; Allen v. Newberry, 21 How. 244; The Troy, 4 Blatchf. 355; Fed. Cas. No. 14192; Case v. Woolley, 6 Dana, 17; New Jersey Co.

v. Merchants' Bank, 6 How. 344.) So it has jurisdiction where the transportation was over a navigable river and a canal. (The E. McChesney, 15 Blatchf. 183; Fed. Cas. No. 4464; contra, McCormick v. Ives, 1 Abb. Adm. 418; Fed. Cas. No. 8720.) If the contract is for navigation of navigable waters, and other service is merely incidental, the whole service is maritime (The Canton, 1 Sprague, 437; Fed. Cas. No. 2388; The Louisa, 2 Wood & M. 48; Fed. Cas. No. 10652); but if the navigation is merely incidental, it is otherwise (The Canton, 1 Sprague, 437; Fed. Cas. No. 2388); and if the case is a mixed question, the fact that some ingredients are of a maritime nature will not be sufficient. (Plummer v. Webb, 4 Mason, 380; Fed. Cas. No. 11233; Kellum v. Emerson, 2 Curt. 79; Fed. Cas. No. 7669.) If the contract provides not merely for transportation, but for the purchase of goods, no libel can be maintained. (Peck v. Laughlin, 37 Leg. Int. 18; Fed. Cas. No. 10890); as it has no jurisdiction of a contract purely personal with no relation to maritime service. (The Virginia, 2 Paine, 115; Fed. Cas. No. 141.) So no action in the admiralty can be maintained for the breach of an executory contract of affreightment (The Pauline, 1 Biss. 390; Fed. Cas. No. 10848; but a maritime lien is not essential to confer jurisdiction; it attaches on the breach of a maritime contract. (Maurey v. Culliford, 10 Fed. Rep. 388.) A contract bond given to secure the performance of a maritime contract is itself a maritime contract. (Haller v. Fox, 51 Fed. Rep. 298.) The jurisdiction depends on the subject-matter of the contract (Waring v. Clarke, 5 How. 441; The Jerusalem, 2 Gall. 345; Fed. Cas. No. 7294); and it is limited to those which are maritime (The Phoebus, 11 Peters, 175; The Hornet, Crabbe, 426; Fed. Cas. No. 1640; The Perseverance, Blatchf. & H. 385; Fed. Cas. No. 11017; Insurance Co. v. Dunham,

11 Wall. 1; *The Plymouth*, 3 Wall. 20); and though made on land, if the subject-matter is maritime, jurisdiction attaches. (*The President*, 4 Wash. C. C. 453; Fed. Cas. No. 18201.) So if it concerns the ship and her owners it is maritime. (*The George T. Kemp*, 2 Low. 477; Fed. Cas. No. 5341. Where jurisdiction attaches to a contract in admiralty, such jurisdiction may be defeated by a novation. (*The Centurion*, 1 Ware, 477; Fed. Cas. No. 2554; *The Hilarity*, Blatchf. & H. 90; Fed. Cas. No. 6480.) So if a note has been received for a maritime contract, a suit cannot be maintained on the contract unless the note is surrendered. (*Ramsay v. Allegre*, 12 Wheat. 611; *Reppert v. Robinson*, Taney, 492; Fed. Cas. No. 11703.) Admiralty will inquire into all breaches and all damages suffered under a contract (*Church v. Shelton*, 2 Curt. 271; Fed. Cas. No. 2714); nor will the jurisdiction be defeated by the peculiar form that the parties give to it (*The Spartan*, 1 Ware, 149; Fed. Cas. No. 4085); so the question of jurisdiction does not depend on the name that the parties give to the instrument sued on. (*The Tribune*, 3 Sum. 144; Fed. Cas. No. 14171.) Cases quasi contractu are within the jurisdiction. (*Banta v. McNeil*, 5 Ben. 74; Fed. Cas. No. 966.)

Maritime contracts.—A contract for the use of a drydock is maritime (*The Mississippi*, 6 Fed. Rep. 543), or a docking contract. (*The Vidal Sala*, 12 Fed. Rep. 207; *The Bob Cornell*, 1 Fed. Rep. 218.) A contract for wharfage is a maritime contract. (*Ex parte Easton*, 95 U. S. 68; *The Kate Tremaine*, 5 Ben. 60; Fed. Cas. No. 7622; *The Ann Ryan*, 7 Ben. 20; Fed. Cas. No. 428; *The Virginia Rulon*, 13 Blatch. 519; Fed. Cas. No. 16974; *Ex parte Lewis*, 2 Gall. 483; Fed. Cas. No. 8310; *The McDonough*, Gilp 101; Fed. Cas. No. 7395; *Contra*, *The Asa R. Swift*,

Newb. 553; Fed. Cas. No. 12144; *The Gem*, 1 Brown Adm. 37; Fed. Cas. No. 5303.) A contract to furnish supplies for a vessel is maritime (*The New Brig*, Gilp. 473; Fed. Cas. No. 3643; *The President*, 4 Wash. C. C. 453; Fed. Cas. No. 18201; *Case v. Wooley*, 6 Dana, 171); or to furnish provisions to a passenger (*The Aberfoyle*, 1 Blatch. 360; Fed. Cas. No. 17); or a contract for repairs (*Lawrence v. Morrisania S. B. Co.*, 9 Fed. Rep. 208.) Policies of insurance are within the admiralty jurisdiction (*Insurance Co. v. Dunham*, 11 Wall. 1; *Gloucester Ins. Co. v. Younger*, 2 Curt. 322; *De Lovio v. Boit*, 2 Gall. 398; Fed. Cas. No. 3776; *Hale v. Washington Ins. Co.*, 2 Story, 176; Fed. Cas. No. 5916; *Peele v. Merchants' Ins. Co.*, 3 Mason, 27; Fed. Cas. No. 10905; *The Dolphin*, 1 Flip. 580; Fed. Cas. No. 3973); and a contract to pay premium on a marine policy is maritime. (*The Guiding Star*, 9 Fed. Rep. 521.) A contract of a broker to procure a crew is maritime (*The Gustavia*, Blatch. & H. 189, Fed. Cas. No. 5876); so is a contract for the use of a barge (*The Dick Keys*, 1 Biss. 408; Fed. Cas. No. 3898); and a contract to tow a vessel (*The Robert L. Stevens*, 22 How. Pr. 78; *The W. J. Walsh*, 5 Ben. 72; Fed. Cas. No. 17922; *The Acadia*, 1 Brown Adm. 73; Fed. Cas. No. 24; *The Oscoda*, 66 Fed. Rep. 347); a contract to get oysters and convey them to a place to plant them (*The Enterpriſe*, 3 Wkl. N. Cas. 172; Fed. Cas. No. 6151), and an agreement between wreckers for services to be mutually performed at sea, are maritime (*Andrews v. Wall*, 3 How. 568.) A bond given to secure the performance of a maritime contract is in itself a maritime contract and is subject to admiralty jurisdiction (*Haller v. Fox*, 51 Fed. Rep. 298.) An action based upon false representations in regard to a voyage is within the admiralty jurisdiction though such representations were made on land before the voyage was begun. (*The Normannia*, 62 Fed. Rep. 469.)

Contracts with carriers—when maritime.—A bill of lading is a maritime contract (*The Gold Hunter*, Blatchf. & H. 300; Fed. Cas. No. 5513.) So a contract for the transportation of a passenger is a maritime contract (*The Moses Taylor*, 4 Wall. 411; *The Aberfoyle*, 1 Abb. Adm. 242; Fed. Cas. No. 16; *The Pacific*, 1 Blatch. 569; Fed. Cas. No. 10643; *Sunday v. Gordon*, Blatch. & H. 569; Fed. Cas. No. 13616; contra, *The Hercules*, Gilp. 184; Fed. Cas. No. 1762.) A court of admiralty has jurisdiction of an action against a common carrier for breach of a contract of affreightment (*New Jersey v. Merch. Bank*, 6 How. 344; *The Gold Hunter*, Blatch. & H. 300; Fed. Cas. No. 5513; *Morewood v. Enequist*, 23 How. 491; *Monteith v. Kirkpatrick*, 3 Blatch. 279; Fed. Cas. No. 9721; *Higgins v. Steamship Co.*, 3 Blatch. 282; Fed. Cas. No. 6469; *Vose v. Allen*, 3 Blatch. 289; Fed. Cas. No. 17006; *The Franklin Crabbe*, 210; Fed. Cas. No. 13660; *The Ninetta*, Crabbe, 534; Fed. Cas. No. 7912; *Church v. Shelton*, 2 Curt. 271; Fed. Cas. No. 2714; *The Hardy*, 1 Dill. 460; Fed. Cas. No. 6056.) So a carrier by sea may sue on a passenger contract (*Marshall v. Bazin*, 7 N. Y. Leg. Obs. 342; Fed. Cas. No. 9125.)

Charter-parties—Affreightment contracts.—Charter-parties and contracts of affreightment are maritime contracts. (*The Belfast*, 7 Wall. 624; *Higgins v. Steamship Co.*, 3 Blatchf. 282; Fed. Cas. No. 6469; *The Elmira Shepherd*, 8 Blatchf. 341; Fed. Cas. No. 4418; *The Naval Reserve*, 5 Fed. Rep. 209; Tons of salt, 5 Fed. Rep. 216; *The Asa Eldridge*, 8 Fed. Rep. 120; *The Fifeshire*, 11 Fed. Rep. 743; *The Monte A.*, 12 Fed. Rep. 331; *The Dick Keys*, 1 Biss. 408; Fed. Cas. No. 3898; *Lowry v. Canal Boat*, 4 Pa. L. J. 25; Fed. Cas. No. 8582.) A charterer may sue the owner in admiralty for a breach of the charter-party (*The Tribune*, 3 Sum. 144; Fed. Cas. No. 14171); so an

owner may sue for a breach of the contract (*Ward v. Thompson*, Newb. 95; *Fed. Cas. No. 17162*), and the charterer may sue in personam, though the voyage was never begun (*Oakes v. Richardson*, 3 Low. 173; *Fed. Cas. No. 10390*); but whether an action lies in admiralty for the refusal to furnish a stipulated cargo, not decided. (*Rich v. Parrott*, 1 Cliff. 55; *Fed. Cas. No. 11760*.) It has no jurisdiction over preliminary agreements to execute a charter party (*Andrews v. Essex Ins. Co.*, 3 Mason, 6; *Fed. Cas. No. 374*; *The Tribune*, 3 Sum. 144; *Fed. Cas. No. 14171*); and the jurisdiction extends over such contract, although part of the service is to be performed on land (*Phoenix Ins. Co. v. Erie & Trans. Co.*, 10 Biss. 18; *Fed. Cas. No. 11112*); as a contract may be maritime although performed on land (*The Onore*, 6 Ben. 564; *Fed. Cas. No. 10538*.) The nature of the contract is more to be regarded than the place of its performance (*Wortman v. Griffith*, 3 Blatchf. 528; *Fed. Cas. No. 18057*); and the will of the parties must decide its character. (*The Thomas Scattergood*, Gilp. 1; *Fed. Cas. No. 11106*.) If a part of the service is done on the land, and is merely incidental and subsidiary to the maritime employment of the vessel, the whole contract is maritime. (*The Mary*, 1 Sprague, 204; *Fed. Cas. No. 9190*; *The Canton*, 1 Sprague, 437; *Fed. Cas. No. 2388*; *The Louisa*, 2 Wood. & M. 48; *Fed. Cas. No. 10652*.) The admiralty has jurisdiction to recover freightage on a charter-party (*Morewood v. Enequist*, 23 How. 491; *The Volunteer*, 1 Sum. 551; *Fed. Cas. No. 16991*; *Certain Logs of Mahogany*, 2 Sum. 589; *Fed. Cas. No. 2559*; *The Spartan*, 1 Ware, 149; *Fed. Cas. No. 4085*); and if the master files the libel, consignee may, with the assent of the assignee, pay the money into court, and interplead and compel a settlement. (*Copp v. D. & D. D. S. R. Co.*, 8 Ben. 321; *Fed. Cas. No. 3215*.)

Admiralty has jurisdiction of a contract for the use of a steamer for an excursion trip. (Marshall v. Pierrez, 9 Ben. 39; Fed. Cas. No. 9130.) A suit in rem is not maintainable for misrepresentations in tonnage or capacity (The Eli Whitney, 1 Blatchf. 360; Fed. Cas. No. 4345); but an action lies for demurrage. (Sprague v. West, 1 Abb. Adm. 548; Fed. Cas. No. 13255.) A charter-party is a maritime contract, and as between the parties to it, a court of admiralty has jurisdiction to determine the obligations arising therefrom, and whether they have been violated, and that in an action in personam or in rem. (Paterson v. Dakin, 31 Fed. Rep. 682.) Or where the demand for relief in rem and in personam is made (The Baracoa, 44 Fed. Rep. 102); but a libel cannot be maintained where the voyage was not undertaken, and no part of the cargo was delivered on board. (The Missouri, 30 Fed. Rep. 384.) A charter for a certain time of a vessel, to be built on certain specifications and guaranty as to speed, is a maritime contract within the jurisdiction of admiralty. (The Baracoa, 44 Fed. Rep. 102.) The jurisdiction of admiralty over a maritime contract of affreightment is not ousted by an additional stipulation therein as to insurance while the goods lay on the wharf. (Rosenthal v. The Louisiana, 37 Fed. Rep. 264.) An action in personam with attachment of the vessel, for a breach of a charter-party, made with owners liable in solido as between themselves will lie against one or more of such owners, the others being unknown to libellant. (Card v. Hine, 39 Fed. Rep. 818.)

Contract for repairs.—A contract by a shipwright to repair a vessel is a maritime contract (A New Brig, Gilp. 473; Fed. Cas. No. 3643; The Sandwich, 1 Pet. Adm. 233; Fed. Cas. No. 13409; Peyroux v. Howard, 7 Peters, 324; The St. Lawrence, 1 Black.

522; *The Eliza Ladd*, 3 Sawy. 519; Fed. Cas. No. 4364); so a contract to raise a vessel and sustain it while being repaired is a maritime contract (*Wortman v. Griffith*, 3 Blatchf. 528; Fed. Cas. No. 18057; *Ransom v. Mayo*, 3 Blatchf. 70; Fed. Cas. No. 11571); but if the repairs are done in her home port the remedy is in personam (*The General Smith*, 4 Wheat. 438; *Peyroux v. Howard*, 7 Peters, 324; *Endner v. Greco*, 3 Fed. Rep. 411; *The Marion*, 1 Story, 68; Fed. Cas. No. 9087; *Reppert v. Robinson*, Taney, 492; Fed. Cas. No. 11703; *The Two Friends*, Bee, 433; Fed. Cas. No. 12819; *Merritt v. Sackett*, 12 Law R. 511; Fed. Cas. No. 9484), unless the laws of the State may give a lien therefor (*The Lottawanna*, 21 Wall. 558; *Peyroux v. Howard*, 7 Peters, 324; *The General Smith*, 4 Wheat. 438; *The St. Lawrence*, 1 Black. 522; *The Celestine*, 1 Biss. 1; Fed. Cas. No. 2541; *The Thomas Scattergood*, Gilp. 1; Fed. Cas. No. 11106; *The Harrison*, 1 Sawy. 353; Fed. Cas. No. 5038; *The Potomac*, 2 Black. 581; *A New Brig*, Gilp. 473; Fed. Cas. No. 3643; *Read v. Hull of a New Brig*, 1 Story, 244; Fed. Cas. No. 11609; *Remnants in Court*, Olcott, 382; Fed. Cas. No. 11697; *The Robert Fulton*, 1 Paine, 620; Fed. Cas. No. 11890; *The Ellen Stewart*, 5 McLean, 269; Fed. Cas. No. 11594; *The Calisto*, 2 Ware, 37; Fed. Cas. No. 2316; *Hull of New Ship*, 2 Ware, 203; Fed. Cas. No. 6859; *The Superior*, Newb. 176; Fed. Cas. No. 4115; *The Richard Busteed*, 1 Sprague, 441; Fed. Cas. No. 11764; *The John Farron*, 14 Blatchf. 24; Fed. Cas. No. 7341; *The Unadilla*, 8 Ben. 478; Fed. Cas. No. 14332; *The Hezekiah Baldwin*, 8 Ben. 556; Fed. Cas. No. 6449; *The Raleigh*, 2 Hughes, 44; Fed. Cas. No. 11539; *The Island City*, 1 Low, 375; Fed. Cas. No. 7109; *The S. G. Owens*, 1 Wall. Jr. 359; Fed. Cas. No. 17310; *The Eliza Ladd*, 3 Sawy. 519; Fed. Cas. No. 4364; *The Robert Morris*, 1 Wall Jr. 33; Fed. Cas. No. 8896; contra,

The Selt, 3 Biss. 344; Fed. Cas. No. 12649; Maguire v. Card, 21 How. 248; The Adele, 1 Ben. 309; Fed. Cas. No. 78; The Edith, 11 Blatchf. 451; Fed. Cas. No. 4283; The Harrison, 2 Abb. U. S. 74; Fed. Cas. No. 5038; The Du Buque, Fed. Cas. No. 9696; 4 Am. L. T. 84; The Augusta, 5 Am. L. T. 495; Fed. Cas. No. 647; In re Kirkland, 12 Am. Law. Reg. (N. S.) 300; Fed. Cas. No. 7842; The Norfolk and Union, 2 Hughes, 123; Fed. Cas. No. 10297.) A libel in rem cannot be maintained for repairs to a foreign vessel in her home port (The Mermaid, 1 Brown Adm. 51; Fed. Cas. No. 9459), nor against the individual interest of an owner (The C. L. B. Reed, 1 Flipp. 655; Fed. Cas. No. 9021.) A claim for repairs is a personal right, and the assignee cannot sue in the admiralty (The Boston, Blatchf. & H. 309; Fed. Cas. No. 1669; The Champion, 1 Brown Adm. 520; Fed. Cas. No. 2583; Reppert v. Robinson, Taney, 492; Fed. Cas. No. 11703; Hull of a New Ship, 2 Ware, 203; Fed. Cas. No. 6859; The Panama, Olcott, 343; Fed. Cas. No. 10703.)

Contracts not maritime.—The following contracts have been held not maritime: Contracts to be performed on non-navigable waters (The Belfast, 7 Wall. 624), as to repair a canal-boat on inland canals (The Hornet, Crabbe, 526); to furnish blocks to save a wrecked vessel (Tons of Iron, 2 Ben. 21; Fed. Cas. No. 13270); a contract between consignor and consignee (Waterbury v. Myrick, Blatchf. & H. 34; Fed. Cas. No. 17253); the contract of a supercargo to sell in a foreign port (The Virginia, 2 Paine, 115; Fed. Cas. No. 141); a contract of bailment by a warehouseman (The Mary Washington, Chase, 125; Fed. Cas. No. 9229); a contract to prepare cargo for carriage and storage (The Alexander McNeil, 20 Int. Rev. Rec. 176; Fed. Cas. No. 3312a); a contract to procure parties to take care of a cargo (The Gustavia,

Blatchf. & H. 189; Fed. Cas. No. 5876), a contract to form a partnership to purchase a vessel (Turner v. Beacham, Taney, 583; Fed. Cas. No. 14252); a contract to furnish articles to carry on trade on a steamboat on an inland river. (Vandewater v. Mills, 19 How. 82.) A maritime contract blended with a contract not maritime will not confer jurisdiction (Turner v. Beacham, Taney, 583; Fed. Cas. No. 14252; Grant v. Poillon, 20 How. 162); so admiralty has no jurisdiction over preliminary contracts leading to maritime contracts. (The Tribune, 3 Sum. 144; Fed. Cas. No. 14171.) A contract for storage of grain in a vessel, during the winter, is not a maritime contract. (The Pulaski, 33 Fed. Rep. 383; The Richard Winslow, 34 U. S. App. 542; 71 Fed. Rep. 426) so a contract to stow or load a vessel is not maritime (Dance v. The Magnolia, 37 Fed. Rep. 367); so, a receipt for charcoal received on board a vessel at fifteen cents per barrel is not a maritime contract. (Krohn v. The Julia, 37 Fed. Rep. 369.) A contract for services such as are usually performed by ship's brokers and business agents and performed on land is not a maritime contract. (The Humboldt, 86 Fed. Rep. 351.)

Contract to build.—A contract to build a vessel is not maritime (People's Ferry Co. v. Beers, 20 How. 393; Roach v. Chapman, 22 How. 129; The Haannah, Bec, 419; Fed. Cas. No. 2898; The Norway, 3 Ben. 163; Fed. Cas. No. 10359; Foster v. Ellis, 5 Ben. 83; Fed. Cas. No. 4968; The Revenue Cutter, 1 Brown Adm. 76; Fed. Cas. No. 11713; The Orpheus, 2 Cliff. 29; Fed. Cas. No. 18169; Cunningham v. Hall, 1 Sprague, 404; Fed. Cas. No. 3482; Read v. A New Brig, 1 Story, 244; Fed. Cas. No. 11609; The Royal George, 1 Woods, 290; Fed. Cas. No. 13102; but see Davis v. A New Brig, Gilp. 473; Fed. Cas. No. 3643; The Charles Mears, Newb. 197; Fed. Cas. No. 10766;

The Richard Busteed, 1 Sprague, 441; Fed. Cas. No. 11764; The Calisto, 2 Ware (Dav. 29), 3; Fed. Cas. No. 2316); nor for furnishing materials (The Iosco, 1 Brown Adm. 495; Fed. Cas. No. 7060; but see the Eliza Ladd, 3 Sawy. 519; Fed. Cas. No. 4364; The Revenue Cutter, 4 Sawy. 143; Fed. Cas. No. 11714); as engines or timber to be used in construction (Roach v. Chapman, 22 How. 129; Edwards v. Elliott, 21 Wall. 532; Foster v. Ellis, 5 Ben. 83; Fed. Cas. No. 4968; The Coernine, 7 Am. Law. Reg. 5; Fed. Cas. No. 2944), or masts and spars (Griffenberg v. The John Laughlin, 2 Wkl. N. Cas. 612; Fed. Cas. No. 5811), or sails and cordage (The J. B. Martin, 26 Wis. 488), or instruments or appurtenances to manage the ship. (Edwards v. Elliott, 21 Wall. 532.) Work or materials furnished for the original construction of a vessel creates no lien (The Pacific, 9 Fed. Rep. 120.)

Maritime services.—To give the district court jurisdiction, the subject-matter of the service must be maritime (The Farmer, Gilp. 524; Fed. Cas. No. 13852); the rule to determine which is by ascertaining whether the vessel is engaged in a maritime voyage, and whether the party is employed to assist in furthering her business (The Harriet, Olcott, 229; Fed. Cas. No. 6097; A New Brig, Gilp. 473; Fed. Cas. No. 3643; De Lovio v. Bolt, 2 Gall. 398; Fed. Cas. No. 3776; The Hornet, Crabbe, 426; Fed. Cas. No. 1640; The Volunteer, 1 Sum. 551; Fed. Cas. No. 16991; The D. C. Salisbury, Olcott, 71; Fed. Cas. No. 3694); and the manner in which the service is employed is not important. To impart a maritime character to the service, it must be connected with the repair of the vessel, or in aid of her navigation (Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874; The Ocean Spray, 4 Sawy. 105; Fed. Cas. No. 10412); as persons employed in navigating vessels, engaged in transporting goods upon tide-water within a harbor

(The Mary, 1 Sprague, 204; Fed. Cas. No. 9190); or a cooper putting a cargo in landing order (The Onore, 6 Ben. 564; Fed. Cas. No. 10538); or a person who weighs, measures, or inspects cargo (The River Queen, 2 Fed. Rep. 731); or a person who removes ballast to prepare the vessel for her cargo (The Windemere, 2 Fed. Rep. 722); or a shipkeeper. (The George T. Kemp, 2 Low. 477; Fed. Cas. No. 5341; The Harriet, Olcott, 229; Fed. Cas. No. 6097; contra, Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874; The Champion, 10 Chic. L. N. 10; Fed. Cas. No. 2584; The Island City, 1 Low. 375; Fed. Cas. No. 7109; The John T. Moore, 3 Woods, 61; Fed. Cas. No. 7430.) Claims for pilotage on navigable waters are within the admiralty jurisdiction (Hobart v. Drohan, 10 Peters, 108; The Anne, 1 Mason, 508; Fed. Cas. No. 412; Wave v. Hyer, Blatchf. & H. 235; Fed. Cas. No. 17297; Ex parte Hager, 12 Fed. Rep. 224, note); so of claims for half pilotage under State laws. (Ex parte McNeil, 13 Wall. 236; The George S. Wright, Deady, 591; Fed. Cas. No. 5340; The America, 1 Low. 176; Fed. Cas. No. 289; The California, 1 Sawy. 463; Fed. Cas. No. 2312.) Maritime services are performed by a cabin boy (Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874); chambermaid (1 Abb. Adm. 490; The Farmer, Gilp. 524; Fed. Cas. No. 13852; The Ohio, Gilp. 505; Fed. Cas. No. 17825; The D. C. Salisbury, Olcott, 71; Fed. Cas. No. 3694); clerk of a steamboat (The Sultana, 1 Brown's Adm. 13; Fed. Cas. No. 13602); carpenter (The Farmer, Gilp. 524; Fed. Cas. No. 13852; The Salisbury, Olcott, 71; Fed. Cas. No. 3694); cook or steward (The Pekin, Gilp. 203; Fed. Cas. No. 13090; The Farmer, Gilp. 524; Fed. Cas. No. 13852; The Ohio, Gilp. 505; Fed. Cas. No. 17825; The Salisbury, Olcott, 71; Fed. Cas. No. 3694; Bouyssou v. Miller, Bee, 190; Fed. Cas. No. 1710); deck-hand

(The Ohio, Gilp. 505; Fed. Cas. No. 17825); but not after the boat is sunk (The M. M. Caleb, 9 Ben. 159; Fed. Cas. No. 9682); engineer (The Ohio, Gilp. 505; Fed. Cas. No. 17825; Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874; The Backus, Newb. 1; Fed. Cas. No. 5048); fireman (The Ohio, Gilp. 505; Fed. Cas. No. 17825; The North America, 5 Ben. 486; Fed. Cas. No. 10314; Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874); pilot (The Ohio, Gilp. 505; Fed. Cas. No. 17825; The Alaska, 3 Ben. 391; Fed. Cas. No. 129; Hobart v. Drogan, 10 Peters, 108; The George S. Wright, Deady, 591; Fed. Cas. No. 5340; Ex parte McNeil, 13 Wall. 236); surgeon (Gurney v. Crockett, 1 Abb. Adm. 490; Fed. Cas. No. 5874; The Ohio, Gilp. 505; Fed. Cas. No. 17825; The Farmer, Gilp. 524; Fed. Cas. No. 13852; The D. C. Salisbury, Olcott, 71; Fed. Cas. No. 3694; contra, The New Jersey, 1 Pet. Adm. 223; Fed. Cas. No. 5233.) A father may sue in the admiralty for the service of his minor son (Plummer v. Webb, 4 Mason, 380; Fed. Cas. No. 11233); but not on a contract on a special retainer without wages. (Plummer v. Webb, 4 Mason, 380; Fed. Cas. No. 11233.) The employment of a stevedore in landing a ship or discharging cargo is a maritime contract. (The Gilbert Knapp, 37 Fed. Rep. 209.) Services rendered to a steamer in her home port in watching her, moving her to secure her safety, expending money in necessary repairs and labor, constitute maritime services. (The Maggie P., 32 Fed. Rep. 300.)

A lien of quarantine commissioners, on a vessel, for services in the care of sick seamen in hospitals, required by a State statute, is enforceable in admiralty. (Platt v. The Georgia, 34 Fed. Rep. 79.)

Salvage services.—The allowance of salvage is an act involving judicial discretion, and the award will not be set aside as too large unless so excessive

so as to shock the conscience of the Court (The R. R. Rhodes, 54 U. S. App. 238; 82 Fed. Rep. 751). If salvage services is rendered to a vessel while she is afloat and proceeding on her voyage, the claim for compensation may be enforced in admiralty (The H. C. Yeager, 1 Fed. Rep. 285), without regard to location (Hobart v. Drogan, 10 Peters, 108; The Patchin, 1 Blatchf. 414, Fed. Cas. No. 87; The Wave, Blatchf. & H. 235, Fed. Cas. No. 17297; the John Gilpin, Olcott, 77, Fed. Cas. No. 7345; The Jenny Lind, Newb. 443, Fed. Cas. No. 17723). A salvor may maintain an action for services to a coal barge (Seven Coal Barges, 2 Biss. 297, Fed. Cas. No. 12677), or to a raft of timber. (A raft of spars, Abb. Adm. 485, Fed. Cas. No. 11529; Fifty Thousand Feet of Timber, 2 Low. 64, Fed. Cas. No. 4783; but see Four Cribs of Lumber, Taney, 533, Fed. Cas. No. 14083.) A salvor may proceed in admiralty, although he is acting under a contract. (The Camanche, 8 Wall. 448; The Sabine, 101 U. S. 384; The Circassian, 1 Ben. 209, Fed. Cas. No. 2722; 2 Ben. 171, Fed. Cas. No. 2723); the Louisa Jane, 2 Low. 295, Fed. Cas. No. 8532.) A libel may be maintained for services to a foreign vessel in foreign waters. (The Sailor's Bride, 1 Brown's Adm. 68; Fed. Cas. No. 12220; Anderson v. Edam, 13 Fed. Rep. 135.) A contract to haul off a vessel aground is maritime. (The Clarion, 1 Brown's Adm. 74; Fed. Cas. No. 2795; The Williams, 1 Brown's Adm. 208, Fed. Cas. No. 17710; The Sailor's Bride, 1 Brown's Adm. 68, Fed. Cas. No. 12220.) Services performed by a wrecking company in saving the cargo of a stranded vessel are maritime. (Coast Wreck Co. v. Phoenix Ins. Co., 13 Fed. Rep. 127.) The admiralty has jurisdiction of a claim for salvage of a prize abandoned by the captor and brought in by a neutral. (McDonough v. Dannery, 3 Dall. 188.) Flotsam, jetsam, and ligan taken up at sea are subject only to admiralty jurisdiction.

(*Lacase v. State*, Addis. 58.) An action in rem lies by the owner against the money awarded (*Waterbury v. Myrick, Blatchf. & H.* 34, Fed. Cas. No. 17253); but the district court cannot adjudicate upon matters of salvage as well in personam as in rem. (*The Centurion*, 1 Ware, 477, Fed. Cas. No. 2554.) So a salvor may maintain an action against the depository of salvaged property. (*Yates v. Johnson*, 11 Law Rep. N. S. 279.) An action in personam lies by a salvor against his co-salvor for his share of the compensation (*Waterbury v. Myrick, Blatchf. & H.* 34, Fed. Cas. No. 17253; *McMullin v. Blackburn*, 59 Fed. Rep. 177), or against the owners and freighters of the vessel. (*McGinnis v. Pontiac*, 5 McLean, 359, Fed. Cas. No. 8801; *The Centurion*, 1 Ware, (477) 490, Fed. Cas. No. 2554; *McConnochie v. Kerr*, 9 Fed. Rep. 50.) A salvor of property which has been taken from his possession by replevin in a State court may maintain a suit in personam against the owner to recover salvage compensation. (*Hudson v. Whitmire*, 77 Fed. Rep. 846.) Admiralty jurisdiction in salvage cases cannot extend to a libel against a dry dock. (*Cope v. Vallette Dry Dock Co.*, 119 U. S. 625.) On a libel by the owners and crew of a steam-tug for salvage, a counter-claim for the wrongful mooring of the tug causing injury to the salvaged barges is not the proper subject of a cross-libel. (*Southwestern Transp. Co. v. Pittsburg Coal Co.*, 42 Fed. Rep. 920.) Where some of the owners of the salvaging ship are part owners of the salvaged property and their interests in the respective properties are varied and graded, the question of salvage must be as between the salvaging ship as one party and the salvaged property as the other, and such owners are not entitled to be dismissed as co-libelants on filing a petition therefor. (*A Lot of Whalebone*, 51 Fed. Rep. 916.)

Service of Master.—A master has no lien in rem for his wages (*Willard v. Dorr*, 3 Mason, 91, Fed. Cas. No. 17679; *Hammond v. Insurance Co.*, 4 Mason, 196, Fed. Cas. No. 6001; *The Aeolian*, 1 Bond, 267, Fed. Cas. No. 8465; *Vowel v. Bacon*, 4 Cranch C. C. 97; Fed. Cas. No. 17018; *Revens v. Lewis*, 2 Paine 202, Fed. Cas. No. 11711; *The New Jersey*, 1 Pet. Adm. 223, Fed. Cas. No. 5233; *The Island City*, 1 Low. 375, Fed. Cas. No. 7109; *The Thomas Scattergood*, Gilp. 1, Fed. Cas. No. 11106; *The Havana*, 1 Sprague, 402, Fed. Cas. No. 6226; *Ex parte Clark*, 1 Sprague 69, Fed. Cas. No. 2796; *The Larch*, 2 Curt. 428, Fed. Cas. No. 8085; *The Monongahela*, 5 Biss. 131, Fed. Cas. No. 9712; *The Dubuque*, 2 Abb. U. S. 20, Fed. Cas. No. 4110); but a master may sue in admiralty for the wages of his apprentice (*Plummer v. Webb*, 1 Ware, (75) 69, Fed. Cas. No. 11234; *S. C.* 4 Mason, 380, Fed. Cas. No. 11233); acting as an agent or factor independent of his character as master is not within the cognizance of the admiralty (*Willard v. Dorr*, 3 Mason, 161, Fed. Cas. No. 17680; *The Santa Ana*, Blatchf. & H. 80, Fed. Cas. No. 12325; *Grant v. Pol-lion*, 20 How. 168; *The Stephen Allen*, Blatchf. & H. 184, Fed. Cas. No. 13361); nor has he a lien for services as pilot. (*The Aeolian*, 1 Biss. 321, Fed. Cas. No. 4504.) The question whether the master of a vessel has proceeded within the time allowed by law for the enforcement of his claim of a lien on the vessel for his wages goes to the merits only and does not affect the jurisdiction of the admiralty court of a libel for such wages. (*The William M. Hoag*, 168 U. S. 443.)

Seamen's wages.—The admiralty has jurisdiction in rem and in personam over the subject of seamen's wages. (*Sheppard v. Taylor*, 5 Peters, 675; *Hastings v. Plater*, 1 Bland. Ch. 613, note; *Harden v. Gordon*, 2 Mason, 541, Fed. Cas. No. 6047; *Martin v. Acker*, Blatchf. & H. 279, Fed. Cas. No. 9155.) A sealer is

a mariner and entitled to a lien for his wages (*The Ocean Spray*, 4 Sawy. 105, Fed. Cas. No. 10412); but raftsmen are not seamen. (*A Raft of Cypress Logs*, 1 Flip. 453, Fed. Cas. No. 11527.) A contract by a seaman to take a share of earnings in lieu of wages is not a partnership (*Duryee v. Elkins*, 1 Abb. Adm. 529, Fed. Cas. No. 4197); but his interest and compensation are wages, and recoverable as such (*The Fairplay*, Blatchf. & H. 136, Fed. Cas. No. 4615); but not until the accounts are made up, or the parties are brought to an accounting. (*Duryee v. Elkins*, 1 Abb. Adm. 529, Fed. Cas. No. 4197.) A contract to serve on a vessel running on a navigable river from a port in one State to a port in another, is a maritime contract. (*The Pekin*, Gilp. 203, Fed. Cas. No. 13090; *The Ohio*, Gilp. 505, Fed. Cas. No. 17825.) Seamen ready to perform their contract, but who are prevented, from the voyage being broken up, have a maritime claim (*The Island City*, 1 Low. 375, Fed. Cas. No. 7109; *The Ocean Spray*, 4 Sawy. 105, Fed. Cas. No. 10412); but if their contract stipulates that they shall receive a certain sum if the voyage shall be changed, or they be discharged, admiralty has no jurisdiction. (*L'Arina v. Manwaring*, Bee, 199, Fed. Cas. No. 8089.) A claim for expenditures by a seaman on account of sickness may be enforced in the admiralty (*Harden v. Gordon*, 2 Mason, 541, Fed. Cas. No. 6047; *The Ben Flint*, 1 Biss. 562, Fed. Cas. No. 1299); so clothing furnished to a seaman creates no lien. (*Rosenthal v. Die Gartenlaube*, 5 Fed. Rep. 827.) A seaman may recover in the admiralty, though part of the work done, taken by itself, would not be of a maritime nature. (*The Charles F. Perry*, 1 Low. 475, Fed. Cas. No. 2616.) So one engaged in catching codfish may unite a claim for bounty and for an account in the same libel. (*The Lucy Anne*, 3 Ware, 253, Fed. Cas. No. 8596.) The equitable

claim of a seaman to his share of the earnings of a venture not liquidated cannot be asserted as a lien on the vessel; there must be positive evidence that wages are due (*The Fairplay*, Blatchf. & H. 136, Fed. Cas. No. 4615); but where the proceeds of a fishing voyage are realized, and the owner refuses or neglects to make up the voyage, the admiralty may award to the seamen their compensation. (*Duryee v. Elkins*, 1 Abb. Adm. 529, Fed. Cas. No. 4197; *Reed v. Hussey*, Blatchf. & H. 525, Fed. Cas. No. 11646.) The admiralty will take cognizance of suits for their respective shares of the aggregate. (*The Fairplay*, Blatchf. & H. 136, Fed. Cas. No. 4615; *Hazard v. Howland*, 2 Sprague, 68, Fed. Cas. No. 6280.) The assignee of a seaman's claim for wages has no maritime lien. (*The Aeolian*, 1 Bond, 267, Fed. Cas. No. 8465; *The Freestone*, 2 Bond, 234, Fed. Cas. No. 12143; *The Patchin*, 12 Law Rep. 21, Fed. Cas. No. 10794.) A claimant of a lien for wages against a vessel may, in an exceptive allegation, bring before the court facts judicially known to the court which do not appear in the libel. (*The Seminole*, 42 Fed. Rep. 924.) Where libelants claim as mariners they must recover in that capacity, if at all, although, under the evidence, they might have had a claim as salvors or lightermen. (*The Sarah E. Kennedy*, 29 Fed. Rep. 264.) The persons employed on a steam dredge and her scows engaged in deepening navigable waters are "seamen." (*Saylor v. Taylor*, 42 U. S. App. 206; 77 Fed. Rep. 476.)

Jurisdiction over foreigners.—The court of admiralty, as originally constituted, was in all maritime nations the appropriate tribunal, and took cognizance of suits by or against or between foreigners (*The Bee*, 1 Ware, 332, Fed. Cas. No. 1219; *The Blaireau*, 2 Cranch, 240; 194 Shawls, 1 Abb. Adm.

317, Fed. Cas. No. 10521); but it is not bound to take jurisdiction over controversies between foreigners; it is for the exercise of the discretion of the court (194 Shawls, 1 Abb. Adm. 317, Fed. Cas. No. 10521; The Brisk, 4 Ben. 252, Fed. Cas. No. 9901; Fry v. Cook, 8 Chic. L. F. 286, Fed. Cas. No. 5138), and parties will be remitted to the home tribunal, when the law of the domicile must be ascertained (194 Shawls, 1 Abb. Adm. U. S. 317, Fed. Cas. No. 10521); but it has jurisdiction in rem when the property is within its jurisdiction. (The Maggie Hammond, 9 Wall. 435; The Jerusalem, 2 Gall. 191, Fed. Cas. No. 7293.) Where the parties are foreigners of different nationalities, the action will be entertained in cases of collisions (Thommasen v. Whitwill, 12 Fed. Rep. 891; The Jupiter, 1 Ben. 536, Fed. Cas. No. 7585; The Russia, 3 Ben. 471, Fed. Cas. No. 12168), or in cases of salvage (The Edam, 13 Fed. Rep. 135; The Blaireau, 2 Cranch, 240; The Sailor's Bride, 1 Brown Adm. 68, Fed. Cas. No. 12220; The Bee, 1 Ware, 332, Fed. Cas. No. 1219; 194 Shawls, 1 Abb. Adm. 317, Fed. Cas. No. 10521); but when there is evidence that the salvor was guilty of embezzlement or spoliation or misconduct, he will be remitted to the home tribunal (194 Shawls, 1 Abb. Adm. 317, Fed. Cas. No. 10521); so it will take cognizance of bottomry bonds on foreign bottoms. (The Jerusalem, 2 Gall. 191, Fed. Cas. No. 7293.) It has jurisdiction of controversies between foreigners, although the suit is in personam. (Davis v. Leslie, 1 Abb. Adm. 123, Fed. Cas. No. 3639.) It will take cognizance of an action for a tort committed during the voyage, if the voyage by contract terminated in this country (Bernhard v. Greene, 3 Sawy. 230, Fed. Cas. No. 1349); but not for an assault and battery at sea on a foreign vessel. (Fry v. Cook, 8 Chic. L. N. 286, Fed. Cas. No. 5138.) A remedy in rem will in general be accorded only in

case of a reciprocal remedy accorded to citizens of the United States in similar controversies (The Maggie Hammond, 9 Wall. 435), and the admiralty will not take jurisdiction, as a general rule, without the consent of the minister or consul. (Ex parte Newman, 14 Wall. 152.) So it will not entertain jurisdiction where the consul requested it not to do so (Lynch v. Crowder, 12 Law Rep. 355, Fed. Cas. No. 8637), though his express consent is not necessary, as it is rather a matter of comity than duty (Davis v. Leslie, 1 Abb. Adm. 123, Fed. Cas. No. 3639; The Klorkgeter, 1 Abb. Adm. 402, Fed. Cas. No. 2083; Gonzales v. Minor, 2 Wall. Jr. 348, Fed. Cas. No. 5530; Steindl v. Lady Furness, 84 Fed. Rep. 679); and his protest cannot bar the jurisdiction, but will be duly considered with the facts and circumstances of the case. (The St. Oloff, 2 Pet. Adm. 428, Fed. Cas. No. 17357; The Becherdass Ambaidass, 1 Low. 569, Fed. Cas. No. 1203.) If the consul consents, the seaman may maintain the action. (The J. L. Wickwire, 7 Phila. 594; Fed. Cas. No. 6262.) Where the court entertains jurisdiction without such consent, it must be a case of peculiar hardship, injustice, or injury. (Gonzales v. Minor, 2 Wall. Jr. 348, Fed. Cas. No. 5530; The Infanta, 1 Abb. Adm. 263, Fed. Cas. No. 7030.) If the seaman has submitted the matter to the consul, he cannot disregard the award and sue in the admiralty (The Mina, 6 Phila. 482, Fed. Cas. No. 14121); so the court will decline jurisdiction on certificate of the consul on the shipping articles that the seaman was discharged and paid (The Infanta, 1 Abb. Adm. 263, Fed. Cas. No. 7030); and the court will not call the consul in question for his official acts. (Patch v. Marshall, 1 Curt. 452, Fed. Cas. No. 10793. See The Salomoni, 29 Fed. Rep. 534.)

Foreign seamen's wages.—The nationality of a vessel determines the nationality of the crew. (The *Amalia*, 3 Fed. Rep. 652; contra, *Bernhard v. Creene*, 3 Sawy. 230, Fed. Cas. No. 1349.) Courts of admiralty have jurisdiction over suits for wages by foreign seamen against foreign vessels or foreign owners whenever the interests of justice require it, or where there would be a failure of justice (*Ex parte Newman*, 14 Wall. 152; *Davis v. Leslie*, 1 Abb. Adm. 123, Fed. Cas. No. 3639; *Buckner v. Klorkgeter*, 1 Abb. Adm. 402, Fed. Cas. No. 2083; *The Hotspur*, 3 Sawy. 194, Fed. Cas. No. 6720; *The Becherdass Ambaidass*, 1 Low. 569, Fed. Cas. No. 1203; *The Ada*, 2 Ware, 408, Fed. Cas. No. 38; *The Napoleon*, *Olcott*, 208, Fed. Cas. No. 10015; *Gonzales v. Minor*, 2 Wall. Jr. 348, Fed. Cas. No. 5530), or where by delay there is likely to be a failure of remedy (*Gonzales v. Minor*, 2 Wall. Jr. 348, Fed. Cas. No. 5530; *The Catharina*, 1 Pet. Adm. 104, Fed. Cas. No. 13949; *Willendson v. Forsoket*, 1 Pet. Adm. 197, Fed. Cas. No. 17682; *Davis v. Leslie*, 1 Abb. Adm. 123, Fed. Cas. No. 3639; *The Nanny, Bee*, 217, Fed. Cas. No. 13984); yet except under peculiar circumstances foreign seamen should be referred to tribunals of their own country (*The Nanny, Bee*, 217, Fed. Cas. No. 13984; *The Aurora, Bee*, 161, Fed. Cas. No. 95.) It is a matter of comity (*The Pacific, Blatchf. & H.* 187, Fed. Cas. No. 10644); and it may well be presumed that nation over whose vessels jurisdiction is thus assumed will consider it as such (*Gonzales v. Minor*, 2 Wall. Jr. 348, Fed. Cas. No. 5530.) The exercise of this jurisdiction is purely a matter of discretion (*Davis v. Leslie*, 1 Abb. Adm. 123, Fed. Cas. No. 3639; *The Pacific, Blatchf. & H.* 187, Fed. Cas. No. 10644; *Gonzales v. Minor*, 2 Wall. Jr. 348, Fed. Cas. No. 5530; *The Napoleon, Olcott*, 208, Fed. Cas. No. 10015; *The Havana*, 1 Sprague, 402, Fed. Cas.

No. 6226, *Steindl v. Lady Furness*, 84 Fed. Rep. 679); and it will never be entertained to impede or break up a voyage (*The Infanta*, 1 Abb. Adm. 263, Fed. Cas. No. 7030; *The Pacific*, Blatchf. & H. 187, Fed. Cas. No. 10644); nor unless the voyage is ended and wages are due (*The Nanny*, Bee, 217, Fed. Cas. No. 13984; *The Aurora*, Bee, 161, Fed. Cas. No. 95); *The Forsoket*, 1 Pet. Adm. 197, Fed. Cas. No. 17682); and although the master consented to discharge him here (*Lynch v. Crowder*, 12 Law Rep. 355; Fed. Cas. No. 8637; *The Theodore Korner*, 3 Am. Law Reg. 47; Cas. No. 7693; and a mere deviation in the voyage is no ground for interfering. (*Bueker v. Klorkgeter*, 1 Abb. Adm. 402, Fed. Cas. No. 2083; *The St. Oloff*, 2 Pet. Adm. 428, Fed. Cas. No. 17357; contra, *The Becherdass Ambaidass*, 1 Low. 569; Fed. Cas. No. 1203; *The Catharina*, 1 Pet. Adm. 104, Fed. Cas. No. 13949; *Moran v. Baudin*, 2 Pet. Adm. 415, Fed. Cas. No. 9785; *The Ada*, 2 Ware, 408, Fed. Cas. No. 38) Admiralty will entertain jurisdiction where the voyage ends here. (*The Pawashick*, 2 Low 142, Fed. Cas. No. 10851); where the voyage has been wholly broken up by sale of the ship, jurisdiction will be entertained (*The Wexford*, 3 Fed. Rep. 577; *The Becherdass Ambaidass*, 1 Low. 569, Fed. Cas. No. 1203; *The Havana*, 1 Sprague, 402, Fed. Cas. No. 6226; *The Gazelle*, 1 Sprague, 378, Fed. Cas. No. 5289; *The Pacific*, Blatchf. & H. 187, Fed. Cas. No. 10644; *The Catharina*, 1 Pet. Adm. 104, Fed. Cas. No. 13949; *The Napoleon*, Olcott, 208, Fed. Cas. No. 10015), although there is a stipulation on the shipping articles that they will not sue in a foreign court. (*The Klorkgeter*, 1 Abb. Adm. 402, Fed. Cas. No. 2083; *The Hermine*, 3 Sawy. 80, Fed. Cas. No. 6409.) So it will entertain jurisdiction where the relation of the seaman with the vessel has been dissolved by wrongful act of the master (*Davis v.*

Leslie, 1 Abb. Adm. 123, Fed. Cas. No. 3639; The Hermine, 3 Sawy. 80, Fed. Cas. No. 6409; The Hotspur, 3 Sawy. 194, Fed. Cas. No. 6720; Gonzales v. Minor, 2 Wall. Jr. 348, Fed. Cas. No. 5530), as by cruel treatment forcing the seamen to leave the ship (The St. Oloff, 2 Pet. Adm. 428, Fed. Cas. No. 17357), or if the vessel becomes unseaworthy. (The Becherdass Ambaidass, 1 Low. 569, Fed. Cas. No. 1203; The Klorkgeter, 1 Abb. Adm. 402, Fed. Cas. No. 2083.) The district courts have no jurisdiction in rem against a Russian vessel, by her crew to enforce a claim for wages. (Treaty with Russia, 8 Stat. 708; The Elwine Kreplin, 9 Blatchf. 438, Fed. Cas. No. 4426.)

Services not maritime.—The privilege of enforcing claims in admiralty does not attach to draymen taking cargo to or from the vessel (The Harriet, Olcott, 429, Fed. Cas. No. 6097). A vessel may be engaged in foreign commerce, and a person be hired on board for services which cannot be called maritime (Sunday v. Gordon, Blatchf. & H. 569, Fed. Cas. No. 13616) as a claim of a day laborer for labor performed on the vessel while lying in port (Graham v. Hoskins, Olcott 224, Fed. Cas. No. 5669; The Harriet, Olcott, 229, Fed. Cas. No. 6097; The Thomas Scattergood, Gilp. 1, Fed. Cas. No. 11106; The Island City, 1 Low. 375, Fed. Cas. No. 7109); or for services of a watchman having care of machinery of a vessel lying at her home port, out of commission, and with no voyage in contemplation (The Sirius, 65 Fed. Rep. 22); or for sweeping and scrubbing the decks, throwing out and securing lines for fastening her, keeping watch against robbery, fire, or other injuries (Gurney v. Crockett, 1 Abb. Adm. 490, Fed. Cas. No. 5874); or work done on a dry dock scraping the hull (Bradley v. Bolles, 1 Abb. Adm. 569, Fed. Cas. No. 1773). So the admiralty has no jurisdiction over services per-

formed on a canal-boat on an inland canal (The Hornet, Crabbe 426, Fed. Cas. No. 1640; McCormick v. Ives, 1 Abb. Adm. 418, Fed. Cas. No. 8720); nor is the contract of a stevedore to stow cargo a maritime contract (Cox v. Murray, 1 Abb. Adm. 340, Fed. Cas. No. 3304; The Amstel, Blatchf. & H. 215, Fed. Cas. No. 339; The Circassian, 1 Ben. 209, Fed. Cas. No. 2722; The Ilex, 2 Woods, 229, Fed. Cas. No. 10842; The Harriet, Olcott, 229, Fed. Cas. No. 6097; The Joseph Cunard, Olcott, 535; Fed. Cas. No. 7535; The S. G. Owens, 1 Wall. Jr. 370, Fed. Cas. No. 8748; contra, The George T. Kemp, 2 Low, 477, Fed. Cas. No. 5341). But service of a stevedore on a foreign vessel is maritime in its nature (The Canada, 7 Fed. Rep. 119). Where the consideration for a maritime service is not money, but rests in special executory stipulations, the admiralty has no jurisdiction to enforce them (Plummer v. Webb, 4 Mason 380, Fed. Cas. No. 11233); as a servant of the master whose sole business is to serve and amuse the master (The Farmer, Gilp. 524, Fed. Cas. No. 13852); or musicians employed on a vessel used as a floating museum (The Superior, Gilp. 514, Fed. Cas. No. 14136). Services of a solicitor of freight are not maritime (The Paola R., 32 Fed. Rep. 174). A contract for services such as are usually performed by ship's brokers and business agents and performed on land is not a maritime contract (The Humboldt, 86 Fed. Rep. 351).

Vessels subject to admiralty jurisdiction.—Admiralty has no regard to registry or enrollment and license (The General Cass, 1 Brown Adm. 334, Fed. Cas. No. 5307). If the business or employment of a vessel appertains to travel or trade and commerce on water, it is sufficient (The General Cass, 1 Brown Adm. 334, Fed. Cas. No. 5307; The Kate Tremaine, 5 Ben. 60, Fed. Cas. No. 7622); and whether her services are maritime in their character (The Salisbury,

Olcott, 71, Fed. Cas. No. 3694), and her size, form or capacity (The General Cass, 1 Brown Adm. 334, Fed. Cas. No. 5307), or means of propulsion are immaterial (The Salisbury, Olcott 71, Fed. Cas. No. 3694; The Farmer of Salem, Gilp. 524, Fed. Cas. No. 13852; The Kate Tremaine, 5 Ben. 60, Fed. Cas. No. 7622); or whether she has master and sails or not is not material (The Salisbury, Olcott, 71, Fed. Cas. No. 3694; The Kate Tremaine, 5 Ben. 60, Fed. Cas. No. 7622.) The distinctions as to the propelling power, whether by steam or sail, have been abolished (The General Cass, 1 Brown Adm. 334, Fed. Cas. No. 5307); so she is within the admiralty jurisdiction, though towed by other vessels (The Salisbury, Olcott 71, Fed. Cas. No. 3694). Whether she is of a class fitted for navigation or not is a question of fact (Reppert v. Robinson, Taney, 492; Fed. Cas. No. 11703.) So canal boats (The Kate Tremaine, 5 Ben. 60; Fed. Cas. No. 7622; The W. J. Walsh, 5 Ben. 72; Fed. Cas. No. 17922; The E. M. Chesney, 14 Blatchf. 183; John B. Cole, Fed. Cas. No. 16875); or derrick boats (Maltby v. Steam Derrick Boat, 3 Hughes, 477; Fed. Cas. No. 9000), ferry-boats (Cheeseman v. Two Ferryboats, 2 Bond, 363; Fed. Cas. No. 2633), coal barges (The F. B. Nimick, 2 Fed. Rep. 86), floating elevators (The Hezekiah Baldwin, 8 Ben. 556; Fed. Cas. No. 6449), lighters (The Farmer of Salem, Gilp. 524; Fed. Cas. No. 13852), scows (The General Cass, 1 Brown Adm. 334; Fed. Cas. No. 5307; Endner v. Greco, 3 Fed. Rep. 411), and tugs (The Volunteer, 1 Brown Adm. 159; Fed. Cas. No. 16990), and a flatboat with a pile-driver erected thereon (Southern Log C. & S. Co. v. Lawrence, 86 Fed. Rep. 907; and a bath-house on boats designed for navigation and transportation (The Public Bath No. 13, 61 Fed. Rep. 692), are subject to admiralty jurisdiction; but not coal barges (The Coal Barges, 3 Wall. Jr. 53; Fed. Cas. No. 7458),

or flatboats (The Coal Barges, 3 Wall. Jr. 53; Fed. Cas. No. 7458), or rafts (Tome v. Lumber, Taney, 533; Fed. Cas. No. 14083; The Coal Barges, 3 Wall. Jr. 53; Fed. Cas. No. 7458; Gastrel v. Cypress Raft, 2 Woods, 213; Fed. Cas. No. 5266), or a marine pump capable of floating and being towed (The Big Jim, 61 Fed. Rep. 503; Hydraulic Steam Dredge, 53 U. S. App. 211, 80 Fed. Rep. 545), or a pile driver (Pile Driver E. O. A., 69 Fed. Rep. 1005.) A steam dredge, which is a floating scow fitted with steam appliances, buckets and scoop, for deepening channels of navigation and like purposes, is a subject of admiralty jurisdiction. (Aitcheson v. The Endless Chain Dredge, 40 Fed. Rep. 253; Saylor v. Taylor, 42 U. S. App. 206; 77 Fed. Rep. 476.) A vessel just arrived from a voyage, with a cargo to be discharged at the place where she is moored, is still a vessel occupied in the business of navigation, and subject to admiralty jurisdiction. (Leathers v. Blessing, 105 U. S. 626.) A dredge and her scows are to be treated as one concern (The Starbuck, 61 Fed. Rep. 502.)

Vessels not subject to the jurisdiction.—The Federal courts have no jurisdiction over the public vessels of a foreign power (The Exchange v. McFaddon, 7 Cranch, 116; L'Invincible, 1 Wheat, 238), nor by proceeding in rem against property of the United States (The Siren, 7 Wall. 152; The Davis, 10 Wall. 15; but see the Revenue Cutter, 1 Brown Adm. 76; Fed. Cas. No. 11713), nor over a vessel owned by a municipal corporation and used in the public service (The Fidelity, 16 Blatchf. 569; Fed. Cas. No. 4758; The Seneca, 8 Ben. 509; Fed. Cas. No. 12668), nor of actions against a vessel already in the custody of the State court (Taylor v. Carryl, 20 How. 583; The Two Friends, Bee, 433; Fed. Cas. No. 12819; The Oliver Jordan, 2 Curt. 414; Fed. Cas. No. 10503; The

Robert Fulton, 1 Paine, 620; Fed. Cas. No. 11890; The Gazelle, 1 Sprague, 378; Fed. Cas. No. 5289; The Orpheus, 3 Ware, 143; Fed. Cas. No. 8330; The Plymouth, Fed. Cas. No. 4822), unless the attachment is collusive and is prosecuted to defeat the jurisdiction of the district court (The Reindeer, 2 Wall. 383; The Roslyn, 9 Ben. 119; Fed. Cas. No. 12068), or the sheriff acquiesced in it (The Julia Ann, 1 Sprague, 382; Fed. Cas. No. 7577; The Golden Gate, Newb. Adm. 308; Fed. Cas. No. 6492; The Golden Gate, Newb. Adm. 296; Fed. Cas. No. 574; The Gazelle, 1 Sprague, 378; Fed. Cas. 5289; The Julia Ann, 1 Sprague, 382; Fed. Cas. No. 7577; The Havana, 1 Sprague, 402; Fed. Cas. No. 6226; The Spartan, 1 Ware, 134; Fed. Cas. No. 11246; O'Callaghon v. Riggs, Fed. Cas. No. 10400; McGinnis v. The Grand Turk, 1 Paine, 73; Fed. Cas. No. 5683); but if a vessel is fraudulently taken from the possession of the marshal, its restoration may be ordered by the admiralty court (The Joseph Gorham, Fed. Cas. No. 7537; see, generally, The John Richards, Newb. Adm. 73; Fed. Cas. No. 11827; The Royal Saxon, 1 Wall. Jr. 311; Fed. Cas. No. 13803; The Royal Saxon, Fed. Cas. No. 17093.)

Employment of vessel.—So the employment of the vessel is not material. If she appertains to travel or trade on public navigable waters it is sufficient (The General Cass, 1 Brown Adm. 334; Fed. Cas. No. 5307); or going from place to place in the United States (The Farmer of Salem, Gilp. 524; Fed. Cas. No. 13852); or in the neighborhood of a city, carrying produce. (Reppert v. Robinson, Taney, 492; Fed. Cas. No. 11703; The Elmira Shepherd, 8 Blatchf. 341; Fed. Cas. No. 4418.) It depends on the character of a vessel, and not the character of her employment. (Reppert v. Robinson, Taney, 492; Fed. Cas. No. 11703.) So a dismantled steamboat used as a hotel is within the admiralty jurisdiction (The Hendrick

Hudson, 3 Ben. 419; Fed. Cas. No. 6355), and it is not necessary that she be engaged in commerce or trade. (The Canton, 1 Sprague, 437; Fed. Cas. No. 2388; but see The Farmer of Salem, Gilp. 524; Fed. Cas. No. 13852.)

Possessory and petitory actions.—Admiralty has jurisdiction of an action to recover possession of a vessel (The Fannie, 8 Ben. 429; Fed. Cas. No. 14014; The North Cape, 6 Biss. 505; Fed. Cas. No. 10316) when a party has the legal title. (The Amelia, 6 Ben. 475; Fed. Cas. No. 6487; The Perseverance, Blathchf. & H. 385; Fed. Cas. No. 11017; Kellum v. Emerson, 2 Curt. 79; Fed. Cas. No. 7669; Kynoch v. The S. C. Ives, Newb. 205; Fed. Cas. No. 7958; The Wm. D. Rice, 3 Ware, 134; Fed. Cas. No. 17691.) When the possession of movable property has been changed either by tort or by contract, the owner may assert his title in admiralty, and although the cargo was converted on shore. (Five Hundred and Twenty-eight Pieces of Mahogany, 2 Low. 323; Fed. Cas. No. 4845.) So where logs are cut from the land and made into a raft (Gastrel v. A Cypress Raft, 2 Woods, 213; Fed. Cas. No. 5266); but the pending of an action in replevin is a bar to the suit in admiralty. (The Royal Saxon, 1 Wall. Jr. 311; Fed. Cas. No. 13803.) Admiralty has jurisdiction over petitory actions as to vessels. (Ward v. Peck, 18 How. 267; The Friendship, 2 Curt. 426; Fed. Cas. No. 5123; The Clarissa Ann, 2 Hughes, 89; Fed. Cas. No. 5826; The Tilton, 5 Mason, 465; Fed. Cas. No. 14054; but see the John Jay, 3 Blatchf. 67; Fed. Cas. No. 7352.) Although a court of admiralty has not the jurisdiction of a court of equity to enforce direct trusts, yet where the agent of the real owner of a vessel has by fraud or mistake procured his name to be placed in the bill of sale of the vessel, a suit in admiralty will lie, at the instance of the

real owner, for possession. (The Daisy, 29 Fed. Rep. 300.)

Jurisdiction exclusive.—The district court, except in particular cases where jurisdiction is given to the circuit courts, is exclusive in all civil causes in admiralty. (The B. F. Woolsey, 18 Blatchf. 347; The Vrow Christina Magdalena, Bee, 11; Fed. Cas. No. 7216.) It is exclusive in the United States courts (Stewart v. Potomac Ferry Co., 12 Fed. Rep. 296; The Glide, 167 U. S. 606), but not as exclusive as that exercised under the civil law. (The Belfast, 7 Wall. 624; Bags of Linseed, 1 Black, 108.) When courts of admiralty have jurisdiction, whether in rem or in personam, the jurisdiction is exclusive, saving the common-law remedy. (The Caroline Reed, 42 Cal. 469; Brookman v. Hamill, 43 N. Y. 554; Poole v. Kermit, 59 N. Y. 554.) The admiralty has jurisdiction of an action for general average. (Mut. Ins. Co. v. Cargo, Olcott, 89; Fed. Cas. No. 9981; The St. Joseph, 6 McLean, 573; Fed. Cas. No. 3908; Dupont de Nemours v. Vance, 19 How. 162; Cutler v. Rae, 7 Howard, 729.) The doctrine of average is known only to the maritime law, and cannot be enforced in a State court. (Rossiter v. Chester, 1 Doug. Mich. 154.) So services performed by average adjusters are maritime. (Coast Wrecking Co. v. Phoenix Ins. Co., 13 Fed. Rep. 127.) A common-law action for trespass, by the owner of one vessel against the owner of another for damages by fire, is not within the exclusive jurisdiction of admiralty (Chappell v. Bradshaw, 128 U. S. 132.)

Authority and power of court.—As a court of admiralty the district court is a court of record. (Ward v. Chamberlain, 2 Black, 430; Thompson v. Lyle, 3 Watts & S. 166.) Jurisdiction of the defendant having been acquired, it has power to entertain

suits in personam even where the parties are foreigners. (*Thommasen v. Whitwell*, 9 Ben. 113; S. C., 12 Fed. Rep. 891.) When the court has jurisdiction it will exercise it over all the incidents (*The Dove*, 1 Gall. 585; Fed. Cas. No. 4035; *The St. Lawrence*, 2 Gall. 19; Fed. Cas. No. 12233; *The Siren*, 7 Wall. 152), as a claim for tort. (*The Siren*, 7 Wall. 152.) A court of admiralty in one district can carry into effect the decree of the court of another district (*Wilson v. Graham*, 4 Wash. C. C. 53; Fed. Cas. No. 17804; *The Rio Grande*, 1 Woods, 279; Fed. Cas. No. 10613), or of another nation where either the property or the person is within its jurisdiction. (*Penhallow v. Doane*, 3 Dall. 54; *The Jerusalem*, 2 Gall. 191; Fed. Cas. No. 7293; *The Centurion*, 1 Ware, 477; Fed. Cas. No. 2554. See the *Joseph Gorham*, 7 Law Rep. 135; Fed. Cas. No. 7537; *Bowler v. Eldridge*, 18 Conn. 1.) It may enforce a decree in personam for the payment of costs rendered in an admiralty court of another district. (*Pennsylvania R. R. Co. v. Gilhooley*, 9 Fed. Rep. 618.) The district court in admiralty can obtain jurisdiction in personam over persons residing without the district by attaching their property lying within the district. (*Atkins v. Disintegrating Co.*, 18 Wall. 272.)

Equity power.—The admiralty has no general equity powers. (*Dean v. Bates*, 2 Wood & M. 87, Fed. Cas. No. 3704.) It has no jurisdiction over trusts (*Davis v. Child*, 2 Ware, 78; Fed. Cas. No. 3628); nor over a specific performance (*The Ernest and Alice*, 2 Hughes, 70; Fed. Cas. No. 3735; *Kynoch v. Ives*, Newb. Adm. 205; Fed. Cas. No. 7958; *Davis v. Child*, 2 Ware, 78; Fed. Cas. No. 3628; *The Wm. D. Rice*, 3 Ware, 134; Fed. Cas. No. 17691), nor to decree the cancelation of an encumbrance (*Dean v. Bates*, 2 Wood. & M. 87; Fed. Cas. No. 3704), nor to

change a written agreement. (*The Perseverance*, Blatchf. & H. 385; Fed. Cas. No. 11017); *Williams v. Providence Wash. Ins. Co.*, 56 Fed. Rep. 159; *Meyer v. Pacific Mail Steamship Co.*, 58 Fed. Rep. 923); nor can it try an equitable title and grant the appropriate relief (*Kellum v. Emerson*, 2 Curt. 79; Fed. Cas. No. 7669; nor to determine the question of fraud in the making of a contract of insurance (*Williams v. Providence Wash. Ins. Co.*, 56 Fed. Rep. 159.) It is not every suit which equity can entertain that is cognizable in the admiralty. (*The Norwich*, 1 Ben. 89; Fed. Cas. No. 11202.) The district courts have jurisdiction in equity and may take cognizance of a suit to foreclose a mortgage on land situated in their districts (*Pooley v. Luco*, 76 Fed. Rep. 146.) The admiralty may set aside a sale where the proceedings were collusive and fraudulent (*The Sparkle*, 7 Ben. 528; Fed. Cas. No. 13207); but it cannot entertain a case to apportion a common fund. (*The Norwich*, 1 Ben. 89; Fed. Cas. No. 11202.) Its jurisdiction extends to controversies concerning the disposition of the vessel and her employment in navigation (*Coyne v. Caples*, 8 Fed. Rep. p. 638; *The Seneca*, Gilp. 10; Fed. Cas. No. 3650; *Revens v. Lewis*, 2 Paine, 203; Fed. Cas. No. 11711); but not to direct a sale of the vessel (*Orleans v. The Phoebus*, 11 Peters, 175; *The Ocean Belle*, 6 Ben. 253; Fed. Cas. No. 10402; see *The Betsina*, 5 Am. Law Reg. 406; Fed. Cas. No. 14236; *The Seneca*, Gilp. 10; Fed. Cas. No. 3650; see *Lewis v. Kinney*, 5 Dill. 159; Fed. Cas. No. 8325); except in case of wreck (*The Tilton*, 5 Mason, 465; Fed. Cas. No. 14054); but it has no jurisdiction over partnership contracts or accounting. (*Ward v. Thompson*, 22 How. 330; *Kellum v. Emerson*, 2 Curt. 79; Fed. Cas. No. 7669; *Hazard v. Howland*, 2 Sprague, 68; Fed. Cas. No. 6280; *Turner v. Beacham*, Taney, 583; Fed. Cas. No. 14252; *The Crusader*,

1 Ware, 437; Fed. Cas. No. 3456.) The admiralty has no jurisdiction over matters of accounts between part owners (*Orleans v. The Phoebe*, 11 Peters, 175; *Grant v. Poillon*, 20 How. 162; *Ward v. Thompson*, 22 How. 330; *Daily v. Doe*, 3 Fed. Rep. 903; *Martin v. Walker*, 1 Abb. Adm. 579; Fed. Cas. No. 9170; *The Ocean Belle*, 6 Ben. 253; Fed. Cas. No. 10402; *Kellum v. Emerson*, 2 Curt. 79; Fed. Cas. No. 7669; *The Larch*, 2 Curt. 427; Fed. Cas. No. 8085; *The Marengo*, 1 Low, 52; Fed. Cas. No. 9065; *Hall v. Hudson*, 2 Sprague, 65; Fed. Cas. No. 5935; *Hazard v. Howland*, 2 Sprague, 68; Fed. Cas. No. 6280; *The H. E. Willard*, 52 Fed. Rep. 387), although they relate to maritime affairs (*Atkins v. Burrows*, 1 Pet. Adm. 244; Fed. Cas. No. 618); but when the taking of an account is merely an incident, the admiralty may take an account. (*The Betsina*, 5 Am. Law Reg. 406; Fed. Cas. No. 14236; *Kellum v. Emerson*, 2 Curt. 79; Fed. Cas. No. 7669.) It can marshal the proceeds of a vessel in its registry only between lienholders and owners. (*The Edith*, 94 U. S. 518.)

A court of admiralty has no chancery powers. It cannot entertain a libel for a specific performance of a contract, or to compel the execution of one. (*Paterson v. Dakin*, 31 Fed. Rep. 682; *Andrews v. Essex F. & M. Ins. Co.*, 3 Mason, 6; Fed. Cas. No. 374); or declare or enforce a trust or an equitable title (*Hill v. The Amelia*, 6 Ben. 475; Fed. Cas. No. 6487); or exercise jurisdiction in matters of account merely (*Minturn v. Maynard*, 17 How. 477; or decree the sale of a ship for an unpaid mortgage, or declare her the property of the mortgagees and direct possession to be given to them. (*Bogart v. The John Jay*, 17 How. 399.) A court of admiralty has not the characteristic powers of a court of equity in a case to wind up a trust and

enforce a contract of sale of a vessel. (*Rea v. The Eclipse*, 135 U. S. 599.)

Maritime liens.—The maritime lien is adopted from the civil law, and imports a tacit hypothecation of the subject of it. (*Vandewater v. Mills*, 19 How. 90; *The Young Mechanic*, 2 Curt. 404; Fed. Cas. No. 18180); it can only exist on movable things engaged in navigation, or things subject of commerce on the high seas, or on navigable waters. (*The Rock Island Bridge*, 6 Wall. 213.) The maritime lien is a *jus in re* without possession or any right of possession. (*The Nestor*, 1 Sum. 73; Fed. Cas. No. 10126; *The H. D. Bacon*, Newb. Adm. 274; Fed. Cas. No. 4232; *Ex parte Foster*, 2 Story, 131; Fed. Cas. No. 4960; *The Atlantic*, Crabbe, 447; Fed. Cas. No. 2976.) They are *stricti juris*, and are not to be extended by implication or construction. (*The Joseph Grant*, 1 Biss. 193; Fed. Cas. No. 7538; *Thomas v. Osborn*, 19 How. 22; *Pratt v. Reed*, 19 How. 359; *The Sultana*, 19 How. 362.) The liability of the ship and the responsibility of the owners are convertible terms. (*The Williams*, Brown Adm. 208; Fed. Cas. No. 17710; *Freeman v. Buckingham*, 18 How. 182.) As every maritime lien imports a personal liability and attaches whenever the owners are liable. (*Andrews v. Wall*, 3 How. 508; *The Richard Busteed*, 1 Sprague, 441; Fed. Cas. No. 11764; *The Edwin*, 1 Cliff. 322; Fed. Cas. No. 4301; *The Paragon*, 1 Ware, 322; Fed. Cas. No. 10708.) It attaches for towage services on the navigable waters (*The John Cuttrell*, 9 Fed. Rep. 777), and is not divested by a sale of the vessel (*Hatch v. The Boston*, 3 Fed. Rep. 807; *The Revenue Cutter No. 1*, Brown Adm. 76; Fed. Cas. No. 11713), nor by a forfeiture. (*The Patapsco*, 13 Wall. 335; *The Grapeshot*, 9 Wall. 130; *The Ranier*, Deady, 438; Fed. Cas. No. 11565.) The general maritime law gives no lien for services for raising a

sunken vessel in her home port. (The D. S. Newcomb, 12 Fed. Rep. 735.) Such services should rank with lien for repairs and supplies. (The Enright, 12 Fed. Rep. 157.) A shipwright has only a common-law lien on the vessel for his services. (The Two Marys, 12 Fed. Rep. 152; The Two Marys, 10 Fed. Rep. 919; The B. F. Woolsey, 7 Fed. Rep. 108.) A shipwright in possession under a common-law lien has a right to appear as a technical "claimant." (The Two Marys, 12 Fed. Rep. 152.) So a watchman has no lien unless his services are for the benefit of all on board. (The Erinagh, 7 Fed. Rep. 231; The America, 56 Fed. Rep. 1021.) The question of lien or no lien in a libel to enforce a lien on a ship is one of the merits and not of jurisdiction. (The Resolute, 168 U. S. 437; The William H. Hoag, 168 U. S. 443.) A scow, which has been fitted up to be used as a houseboat and chartered by other persons who engaged the libellant to tow the houseboat, without informing him that the vessel was chartered, is subject to the lien. (Rogers v. A Scow Without a Name.)

Enforcement of maritime lien.—The admiralty has general jurisdiction to enforce maritime liens. (The America, Newb. Adm. 195; Fed. Cas. No. 2046; The Nestor, 1 Sum. 73; Fed. Cas. No. 10126; The Spartan, 1 Ware. 149; Fed. Cas. No. 4085; Davis v. Child, 2 Ware, 78; Fed. Cas. No. 3628; Cutler v. Rae, 7 How. 729.) If the subject-matter is maritime, the lien may be enforced, although it arises under a State law (The Missouri, 9 Blatchf. 433; Fed. Cas. No. 15785), or by common or local law. (The Island City, 1 Low. 375; Fed. Cas. No. 7109; The Illinois, 6 McLean, 413; Fed. Cas. No. 10005; The Marion, 1 Story, 68; Fed. Cas. No. 9087.) Its jurisdiction to enforce a maritime lien is exclusive (Killam v. The Erie, 3 Cliff. 456; Fed. Cas. No. 7765); so admiralty will en-

force a lien conferred by a foreign law. (The Pawashick, 2 Low. 142; Fed. Cas. No. 10851; The Havana, 1 Sprague 402; Fed. Cas. No. 6226; The Wexford, 3 Fed. Rep. 577; The Enterprise, 1 Low. 455; Fed. Cas. No. 4498.) Where the lien is given by the maritime law, it is a question of comity. (The Maggie Hammond, 9 Wall. 435.) The question as to the true limits of the admiralty jurisdiction is judicial, and no statute or act of Congress can make it broader than the judicial power may determine. (The Lottawanna, 21 Wall. 558; The St. Lawrence, 1 Black, 525.) It is not every case where the lien exists by local law that the admiralty will enforce it. (A New Brig, 1 Story, 244; Fed. Cas. No. 11609.) State legislatures have no authority to create maritime liens (Leon v. Galceran, 11 Wall. 185; The John Richards, Newb. Adm. 73; Fed. Cas. No. 11827; The Alaska, 3 Ben. 391; Fed. Cas. No. 129; Hobart v. Droган, 10 Peters, 108); but a State law may give a substantial right which may be enforced by the appropriate remedy (Ex parte McNiel, 13 Wall. 236); so if it gives a master a lien for his wages, he may enforce it by a proceeding in rem in admiralty. (The Mary Gratwick, 2 Sawy. 342; Fed. Cas. No. 17591.) It is immaterial whether the claim could be enforced in rem, for the remedy will be afforded according to the *lex fori*. (The Boston, Blatchf. & H. 309; Fed. Cas. No. 1669; The Champion, 1 Brown Adm. 520; Fed. Cas. No. 2583; The Maggie Hammond, 9 Wall. 435.) A maritime lien may be enforced by proceedings in personam if the property has passed into the hands of third parties. (Sheppard v. Taylor, 5 Peters, 675; Cutler v. Rae, 7 How. 729.) Maritime freights in the hands of a depositary are subject to an attachment in admiralty to enforce a maritime lien, though they were proceeded against in a State court without jurisdiction. (The Vigilancia, 63 Fed. Rep. 733.)

When there can be no lien until there is a seizure, it cannot be enforced in admiralty. (*The Samuel Strong*, 6 McLean, 587; Fed. Cas. No. 17607.) It has jurisdiction to enforce a lien against third persons who have purchased the property subject to the lien. (*Bucknam v. Dunn*, 2 Hask. 215; Fed. Cas. No. 2096.) A vessel in the possession of an assignee for the benefit of creditors under the Oregon insolvent law, is not in the custody of the court so as to prevent a proceeding against her in admiralty to enforce a maritime lien. (*The City of Frankfort*, 62 Fed. Rep. 1006.) One who has a maritime lien against property in the hands of an assignee for the benefit of creditors is not obliged to obtain the consent of a State court before arresting the property in the admiralty. (*The James Roy*, 59 Fed. Rep. 784.) Where a vessel has been sold to pay maritime liens the district court will not adjudge the surplus to, or apportion it between, the holders of receiver's certificates issued by the receiver of the owner of the vessel appointed by the State court of another State. (*The Willamette Valley*, 76 Fed. Rep. 838.)

Lien for advances.—A person who lends money for the purpose of repairs or furnishing supplies is entitled to the same privilege as one who repairs or supplies the vessel (*The Union Express*, Brown Adm. 537; Fed. Cas. No. 14364; *The Horatio, Bee*, 167; Fed. Cas. No. 11438; *The Boston, Blatchf. & H.* 309; Fed. Cas. No. 1669; *The Medora*, 2 Wood. & M. 92; Fed. Cas. No. 8237; *Davis v. Child*, 2 Ware, 78; Fed. Cas. No. 3628; *The Lulu*, 10 Wall. 192); so one who advances money to release a vessel from an attachment may sue in admiralty to recover it (*The J. R. Hoyle*, 4 Biss. 234; Fed. Cas. No. 7557); or who releases her by means of a stipulation. (*The Hoyle*, 4 Biss. 238; Fed. Cas. No. 7557; *The Romp*, 2 Abb. U.

S. 31; *The Robertson*, 8 Biss. 180; Fed. Cas. No. 11923.) The shipwright cannot sue in a port where there is a consignee with ample funds (*The Lady Horatia*, Bee, 167; Fed. Cas. No. 11438; *Emily Souder*, 17 Wall. 666); so the admiralty has no jurisdiction over an action by a broker or agent to recover a balance due for advances. (*Minturn v. Maynard*, 17 How. 477.) If a party loans moneys to be used in the purchase of a vessel, and takes a power of attorney to sell her as security, the agreement is not maritime. (*The Perseverance*, Blatchf. & H. 385; Fed. Cas. No. 11017.) A party stipulating for the release of a vessel, and paying the amount of the decree, does not thereby become subrogated to the rights of the former lienholder. (*The Robertson*, 8 Biss. 180; Fed. Cas. No. 11923.) Money advanced to purchase commodities to be shipped to the officers of the boat creates no lien. (*The Josephine Spangler*, 9 Fed. Rep. 773.) A lien for borrowed money is on the same footing as that for which it was borrowed. (*The Guiding Star*, 9 Fed. Rep. 521.)

For materials and supplies.—Any contract made to equip, fit, or furnish a vessel after she is launched and afloat is a maritime contract. (*The Eliza Ladd*, 3 Sawy. 519; Fed. Cas. No. 4364.) The admiralty has jurisdiction over actions for supplies and materials furnished to foreign vessels. (*The Jerusalem*, 2 Gall. 345; Fed. Cas. No. 7294; *The Sandwich*, 1 Pet. Adm. 233; Fed. Cas. No. 13409; *The Nestor*, 1 Sum. 73; Fed. Cas. No. 10126; *The Ida Stockdale*, Fed. Cas. No. 3052.) So supplies furnished in one State to a vessel belonging to another are furnished to a foreign vessel (*The Charles Mears*, Newb. Adm. 197; Fed. Cas. No. 10,766; *The Chusan*, 2 Story, 455; Fed. Cas. No. 2717; *The Nestor*, 1 Sumn. 73; Fed. Cas. No. 10,126; *The Superior*, Newb. Adm. 176; Fed. Cas. No.

4115; *The Henrietta*, Newb. Adm. 284; Fed. Cas. No. 6121; *The Hilarity*, Blatch. & H. 90; Fed. Cas. No. 6480; *The Stephen Allen*, Blatch. & H. 175; Fed. Cas. No. 13,361; *The Medora*, 2 Wood. & M. 92; Fed. Cas. No. 8237.) The lien attaches for provisions, although the creditor knows that the master took the vessel on shares, and that he is to victual and man her if furnished on the credit of the vessel. (*The Monsoon*, 1 Sprague, 37; Fed. Cas. No. 9716; *The Sara Starr*, 1 Sprague, 453; Fed. Cas. No. 12,354; *The Phebe*, 1 Ware, 263; Fed. Cas. No. 11,064; *Webb v. Peirce*, 1 Curt. 104; Fed. Cas. No. 17,320; *Freeman v. Buckingham*, 18 How. 182; *Thomas v. Osborn*, 19 How. 22; *Pratt v. Reed*, 19 How. 359.) A maritime lien does not attach to a canal-boat for family supplies. (*The T. L. Wadsworth*, 13 Fed. Rep. 46.) A contract to furnish nets to a fishing vessel is a maritime contract. (*Lord v. The Hiram R. Dixon*, 33 Fed. Rep. 297.) A contract for supplies and fuel, and for services performed, is a maritime contract. (*Jutte v. Davis*, 21 Pitts. L. J. N. S. 94.) Where there are funds in the registry from the sale of the vessel in a possessory suit the court has power to pay therefrom claims for repairs and supplies furnished to the vessel. (*The Templar*, 59 Fed. Rep. 203.)

Over bottomry bonds.—Admiralty jurisdiction extends over bottomry bonds by whomsoever executed (*The Jerusalem*, 2 Gall. 191; Fed. Cas. No. 7293; *The Mary*, 1 Paine, 671; Fed. Cas. No. 9187; *The Draco*, 2 Sum. 157; Fed. Cas. No. 4057), and irrespective of the completion or noncompletion of the voyage (*The Draco*, 2 Sum. 157; Fed. Cas. No. 4057); but the instrument must have the essentials of a bottomry bond (*The Medora*, 2 Wood. & M. 92; Fed. Cas. No. 8237), as the jurisdiction depends on the subject mat-

ter of the contract (*The Mary*, 1 Paine, 671; Fed. Cas. No. 9187); the test being the subject matter for which the thing is pledged (*The Medora*, 2 Wood. & M. 92; Fed. Cas. No. 8237), and maritime risks must be incurred. (*The Atlantic*, Newb. Adm. 514; Fed. Cas. No. 8980.) The bond may be given by the owner at the home port, where there is an express pledge as security (*The Draco*, 2 Sum. 157; Fed. Cas. No. 4057), and although the money was not borrowed for the purpose of the voyage. (*The Draco*, 2 Sum. 157; Fed. Cas. No. 4057; but see *The Attila*, Crabbe, 326; Fed. Cas. No. 7881.) If the hypothecation is to procure materials and supplies in a foreign port without assuming maritime risks, it is not cognizable in admiralty (*The Atlantic*, Newb. Adm. 514; Fed. Cas. No. 8980); and if a bill is drawn it must share the fate of the bond. (*The Atlantic*, Newb. Adm. 514; Fed. Cas. No. 8980.)

Mortgages.—A mortgage on a vessel is not a maritime contract (*The John Jay*, 17 How. 399; *The Angelique*, 19 How. 239; *The Ernest and Alice*, 2 Hughes. 70; Fed. Cas. No. 3735; *The Medora*, 2 Wood. & M. 92; Fed. Cas. No. 8237), and admiralty cannot enforce the lien. (*People's Ferry Co. v. Beers*, 20 How. 393; *The John Jay*, 3 Blatchf. 67; Fed. Cas. No. 7352; *The John and Alice*, 1 Wash. C. C. 293; Fed. Cas. No. 6923; *Deshon v. The Medora*, 2 Wood. & M. 118; Fed. Cas. No. 3820. See *The Hilarity*, Blatchf. & H. 90; Fed. Cas. No. 6480.) The admiralty has no jurisdiction of a possessory action brought by a mortgagee. (*Morgan v. Tapscott*, 5 Ben. 252; Fed. Cas. No. 9808; *The W. D. Rice*, 3 Ware, 134; Fed. Cas. No. 17691; *The Martha Washington*, 3 Ware, 245; Fed. Cas. No. 9148.) Though a court of admiralty has no jurisdiction to entertain independent actions to foreclose mortgages upon vessels, yet when such court has

a fund to dispose of, arising from the sale of such vessel, it may entertain claims based on mortgages, pass on their validity and priority, and order them paid out of the fund. (*The Katie O'Neil*, 65 Fed. Rep. 111.)

Liens conferred by State statutes.—A State law may give a lien not already cognizable in admiralty, and authorize its enforcement in rem. (*The America*, 34 Cal. 676; *The John Shallcross*, 35 Ind. 19; *Edwards v. Elliott*, 21 Wall. 332; *The Alabama Belle*, 20 La. An. 432; *The R. R. Roberts*, 46 Ind. 476; *Wyatt v. Stuckley*, 29 Ind. 279; *The Mollie Dozier*, 24 Iowa, 192; *The Richard Busteed*, 109 Mass. 400; *The Fanny Barker*,^a 40 Mo. 235, 253; *The Magnolia*, 44 Mo. 67; *The Magnolia*, 45 Mo. 69; *Hursey v. Hassam*, 45 Miss. 133; *Fisher v. Luling*, 33 N. Y. Super. 337; *Murphy v. Salem*, 8 N. Y. Sup. 140; *Sheppard v. Steele*, 43 N. Y. 52; *Fralick v. Betts*, 13 Hun, 632; *The M. Tuttle v. Buck*, 23 Ohio St. 565. See the *City of Erie v. Canfield*, 27 Mich. 479; *Nicholson v. State*, 3 Har. & McH. 109); but it cannot authorize the enforcement of such a lien by proceedings in rem in the State court. (*The Glide*, 167 U. S. 606.) A State law may give a lien for repairs in the home port, and confer jurisdiction on a State court to enforce it by a personal action and attachment against the vessel (*The Hyatt v. Reitz*, 4 Bush, 395; *The Starlight*, 103 Mass. 227; but see *The Glide*, 167 U. S. 606), or writ of sequestration. (*Leon v. Galceran*, 11 Wall. 185.) And a State court may issue such attachment in an action brought to enforce a maritime contract. (*Albany City Ins. Co. v. Whitney*, 70 Pa. St. 248; *Switzer v. Heinn*, 27 La. An. 25.) So the proceeding by attachment may be against an owner, and his interest be subjected to sale in a State court (*Hine v. The Trevor*, 4 Wall. 555; *Commonwealth v. Fry*, 4 W. Va.

721; *Merritt v. Peabody*, 40 Ga. 177); but it must be in a suit in personam (*Haeberle v. Barringer*, 29 La. An. 410; *The Glide*, 167 U. S. 606); and under the State process, whatever its name, the vessel may be held to answer the final judgment (*Southern Dry Dock Co. v. The J. D. Perry*, 23 La. An. 39); but a State law cannot create a maritime lien and confer jurisdiction in the admiralty in rem (*The Sylvan Glen*, 9 Fed. Rep. 335; *The Glide*, 167 U. S. 606), as on a contract not maritime (*The Pacific*, 9 Fed. Rep. 120); but may give a lien for negligently causing the death of a person. (*The Glendale*, 77 Fed. Rep. 906; *The Willamette*, 41 U. S. App. 26; 70 Fed. Rep. 874. *Contra*, *The Sylvan Glen*, 9 Fed. Rep. 335.) State legislatures may create liens on domestic vessels, founded on maritime contracts (*The Belfast*, 7 Wall. 624; *The Harrison*, 1 Sawy. 353; Fed. Cas. No. 5038; *The Edith*, 11 Blatchf. 466; *The New Brig. Gilp*, 536; Fed. Cas. No. 6090); but it cannot provide for the enforcement in rem (*The Edith*, 11 Blatchf. 466; *The Kalorama*, 10 Wall. 204; *The Belfast*, 7 Wall. 625); nor give any other than a common-law remedy. (*Leon v. Galceran*, 11 Wall. 185; *The Circassian*, 12 Am. Law Reg. (N. S.) 291; Fed. Cas. No. 2720 a; *The Edith*, 11 Blatchf. 466.) A lien given by State law for materials and repairs furnished to a vessel in a home port may be enforced in admiralty. (*Aitcheson v. The Endless Chain Dredge*, 40 Fed. Rep. 253; and for supplies, *The H. N. Emilie*, 70 Fed. Rep. 511.) But a lien given to a part owner of a vessel for debts contracted and advances made for certain purposes not being of a maritime nature, cannot give jurisdiction to a federal court sitting in admiralty. (*The H. E. Willard*, 53 Fed. Rep. 599.) A State statute cannot affect the admiralty or maritime jurisdiction, or the operation of the maritime law in maritime cases. (*Butler v.*

Boston & S. Steamship Co., 130 U. S. 527; New Zealand Ins. Co. v. Earnmoor S. S. Co., 48 U. S. App. 245; 79 Fed. Rep. 369.) Courts of admiralty cannot be controlled by State legislation in the distribution of the proceeds of vessels sold under admiralty process, but will recognize liens created by State statutes and assign them to the class to which they belong under the maritime law of priority, where they will share equally with other liens of the same class. (The Menominie, 36 Fed. Rep. 197.) A lien on a ship given by State statute may be enforced in admiralty. *Id.* A maritime lien against a vessel for supplies, created by a State statute, will not be enforced by the United States courts unless the supplies were furnished on the credit of the vessel (Lighters Nos. 27 & 28, 15 U. S. App. 236; 57 Fed. Rep. 664.) A federal admiralty court cannot enforce a lien given by a State statute upon a floating structure, unless the same is of such a character as to be a subject of admiralty jurisdiction. (Pile Driver E. O. A., 69 Fed. Rep. 1005.) A lien given by a State statute for labor done in the original construction of a vessel, even after she is launched, is not enforceable in the federal admiralty courts, for the contract is not of a maritime nature, the vessel not yet having become engaged in commerce. (The William Windom, 73 Fed. Rep. 496.

Enforcement of liens given by State law.—Liens given by the State law at the home port of a vessel will be recognized (The General Tompkins, 9 Fed. Rep. 620; The Guiding Star, 9 Fed. Rep. 521); and enforced in admiralty in a suit *in rem* (The City of Salem, 10 Fed. Rep. 843), subject to the qualification of the State law. (The Alida, Abb. Adm. 165; Fed. Cas. No. 199; The Barges, 6 Penn. L. J. 473; Fed. Cas. No. 6390.) Where a lien is created by the *lex loci contractus* it will generally be enforced by the

lex fori. (The Maggie Hammond, 9 Wall. 435; The Boston, Blatchf. & H. 309; Fed. Cas. No. 1669; The Champion, 1 Brown Adm. 520; Fed. Cas. No. 2583.) A person cannot enforce a lien in rem in the State court, although he makes the owner a party (The B. F. Woolsey, 3 Fed. Rep. 457.) The federal admiralty courts cannot enforce a lien claimed under a State statute for materials and repairs furnished to a foreign vessel, unless it appears that credit was given to the vessel. (The Electron, 45 U. S. App. 16; 74 Fed. Rep. 689.)

Maritime torts.—Jurisdiction over maritime torts depends on locality, and is limited to the sea or to navigable waters (U. S. v. Coombs, 12 Pet. 72; The Commerce, 1 Black. 574; The Plymouth, 3 Wall. 20; Thomas v. Lane, 2 Sum. 1; Fed. Cas. No. 13902), although they lie within the limits of another sovereignty. (The Eagle, 8 Wall. 15; Thomas v. Lane, 2 Sum. 1; Fed. Cas. No. 13902.) The jurisdiction does not depend on the fact of the tort, but upon the locality. (The Plymouth, 3 Wall. 20; Lake Shore R. R. Co. v. Cochran, 15 Int. Rev. Rec. 114; Fed. Cas. No. 7996.) Torts are only local in the sense that they must be committed on some navigable water within admiralty cognizance. (Cheeseman v. Two Ferryboats, 2 Bond, 363; Fed. Cas. No. 2633.) The jurisdiction over torts extends to the high seas, without reference to the nationality of the vessel or to that of the parties (The Jupiter, 1 Ben. 536; Fed. Cas. No. 7585; The Russia, 3 Ben. 471; Fed. Cas. No. 12168; Bernhard v. Creene, 3 Sawy. 230; Fed. Cas. No. 1349); and if committed in navigable waters it is within the jurisdiction, although the vessel is not engaged in foreign commerce or commerce between the States. (The Commerce, 1 Black, 574; The Belfast, 7 Wall. 624.) It extends to a tort committed on

a canal connecting two navigable rivers affected by the tides. (The Avon, 1 Brown Adm. 170; Fed. Cas. No. 680; The Oler, 2 Hughes, 12; Fed. Cas. No. 10485.) Every species of tort, however, occurring and whether on board vessel or not, if on the high seas or on navigable waters, is of admiralty cognizance. (The Plymouth, 3 Wall. 20.) Torts are not confined to wrongs or injuries committed by direct force, but embrace all wrongs suffered in consequence of negligence or malfeasance (The Philadelphia W. & B. R. R. Co. v. Towboat Co., 23 How. 209), without distinction as to property or person (Chamberlain v. Chandler, 3 Mason, 242; Fed. Cas. No. 2575), or whether a direct or consequential wrong, as assault and imprisonment, denial of comforts and necessities, brutal insult and maltreatment. (Chamberlain v. Chandler, 3 Mason, 242; Fed. Cas. No. 2575.) The district courts have cognizance of torts committed on the high seas, when the parties of the vessel are found within their jurisdiction, without reference to the nationality of either. (The Noddleburn, 30 Fed. Rep. 142. And see the Belgenland, 114 U. S. 355.) Locality is the test, in cases of tort, by which to determine the question whether the wrongful act is one of admiralty cognizance. (The Commerce, 1 Black, 574.) When the tort is committed partly on land and partly on water the locus of the damage determines whether admiralty has jurisdiction. (Hermann v. Port Blakeley Mill Co., 69 Fed. Rep. 646; The Mary Garrett, 63 Fed. Rep. 1009.) Marine torts may be prosecuted in personam in any district where the offending party resides, or in rem whenever the offending thing is found to be within the jurisdiction of the court issuing the process. (The Commerce, 1 Black, 574.) Courts of admiralty have no jurisdiction over torts committed on water, but resulting in damage upon

land. (*The John C. Sweeney*, 55 Fed. Rep. 540; *Price v. The Belle of the Coast*, 66 Fed. Rep. 62.) An illegal seizure of a vessel while lying at the dock is a maritime tort. (*Jervy v. The Carolina*, 66 Fed. Rep. 1013.) Although an injury has been done by a vessel as the direct instrumentality of harm, such vessel cannot be held responsible in admiralty more than at common law, unless the owner is accountable for the injury, either personally or upon the principle of agency. (*Mayor of New York v. Workman*, 35 U. S. App. 201; 67 Fed. Rep. 347.) The wrongful arrest on shore of deserting seamen is a tort not maritime in character. (*Bain v. Sandusky Transp. Co.*, 60 Fed. Rep. 912.)

Personal injuries.—Courts of admiralty have jurisdiction of an action of damages for personal injuries caused by negligence of the officers and crew of the vessel (*The Mary Stewart*, 10 Fed. Rep. 137; *The Helios*, 12 Fed. Rep. 732; *Ex parte Gordon*, 12 Fed. Rep. 223, note; *The Henry P. Dewey*, 12 Fed. Rep. 159); such injury is a maritime tort (*Leathers v. Blessing*, 4 Morr. Trans. 777; S. C. 13 Fed. Rep. 48, note); so an action lies by a passenger for being put on short allowance on the voyage (*The Creole*, 1 Phila. 190; Fed. Cas. No. 8655), or for depriving a passenger of food and shelter under a claim that the passenger's ticket was not good (*The Willamette Valley*, 71 Fed. Rep. 712). or for personal injuries caused by an explosion. (*In re Long Island Co.* 5 Fed. Rep. 599.) An injury to a person of one vessel caused by the negligence of those charged with the navigation of another vessel is a maritime tort. (*The Sea Gull*, Chase, 145; Fed. Cas. No. 12578; *The Sea Gull*, 16 Pittsb. L. J. 194; Fed. Cas. No. 12578 a.) An injury on board a vessel caused by explosion is a maritime tort. (*The Highland Light*, Chase, 150;

Fed. Cas. No. 6477; *The New World v. King*, 16 How. 469.) A workman employed to make repairs may recover damages for injuries from negligence in moving a vessel (*The Tulchen*, 2 Fed. Rep. 600); so a person employed by charterers to trim a vessel if injured by dunnage negligently stowed may maintain an action for damages. (*The Kate Cann*, 2 Fed. Rep. 241.) The admiralty may maintain an action by a passenger for ill-treatment and injury to him during the voyage. (*Chamberlain v. Chandler*, 3 Mason, 242; Fed. Cas. No. 2575.) Even though the seaman be an American engaged on board a foreign vessel. (*Bolden v. Jensen*, 70 Fed. Rep. 505; but see contra, *The Welhaven*, 55 Fed. Rep. 80.) So a husband may maintain an action for damages for injury to his wife, causing her death. (*The Sea Gull*, Chase, 145; Fed. Cas. No. 12578.) The admiralty has jurisdiction of an action for transporting libellant to a foreign shore against his consent (*Yankee v. Gallagher*, 1 McAll. 467; Fed. Cas. No. 18124), or of an action by a parent for shipping his minor son and transporting him beyond seas (*Steele v. Thacher*, 1 Ware, 91; Fed. Cas. No. 13348), or for abduction of his son and taking him on a voyage. (*Plummer v. Webb*, 4 Mason, 380; Fed. Cas. No. 11233.) Where a tort is committed partly on land and partly on water, the question whether admiralty has jurisdiction over it is determined by the locus of the damage, and not the locus of the origin of the tort. (*Hermann v. Port Blakely Mill Co.*, 69 Fed. Rep. 646.) Thus an injury to a person on a wharf caused by negligence on a ship is not a subject of admiralty jurisdiction. (*The Mary Garrett*, 63 Fed. Rep. 1009.) The federal admiralty courts have power to issue a warrant of arrest as process for compelling defendants to respond to a claim for damages for personal injuries and cruelty inflicted

on a seaman (*Belden v. Jensen*, 69 Fed. Rep. 745), but not for damages for intentional and unlawful violence inflicted by the master on a stowaway. (*The Miami*, 78 Fed. Rep. 818.)

Death caused by negligence.—The court of admiralty has jurisdiction of an action of damages for the death of a person caused by negligence (*Holmes v. O. & C. R. Co.*, 5 Fed. Rep. 75; *Ex parte Detroit Riv. Ferry Co.* 12 Fed. Rep. 224, note; *The Sylvan Glen*, 9 Fed. Rep. 335; *The Highland Light*, 1 Chase, 150; Fed. Cas. No. 6477; *The Towanda*, 34 Leg. Int. 394; Fed. Cas. No. 14109; *The Garland*, 5 Fed. Rep. 924); and the administrator may bring his suit in rem against the vessel. (*The City of Brussels*, 6 Ben. 370; Fed. Cas. No. 2745.) But in the absence of an act of Congress or a State statute giving the right of action therefor, a suit in admiralty cannot be maintained in the courts of the United States to recover damages for the death of a human being on the high seas or the waters navigable from the sea, which is caused by negligence. (*The Wydale*, 37 Fed. Rep. 716; *The Harrisburg*, 119 U. S. 199; *Metcalf v. The Alaska*, 130 U. S. 201; *Van Pelt v. The Alaska*, 33 Fed. Rep. 107; *Welsh v. The North Cambria*, 39 Fed. Rep. 615.) The United States district court has no jurisdiction of a libel filed by an administratrix for the death of her intestate from a marine tort, under a State statute giving a right of action to the personal representatives of one whose death is caused by a wrongful act. (*Oleson v. The Ida Campbell*, 34 Fed. Rep. 432.) Any defense that will bar recovery in the State courts in an action for negligence causing the death of a person must be held equally good in admiralty. (*The A. W. Thompson*, 39 Fed. Rep. 115.)

Torts—Injuries to property.—Torts are not cognizable in admiralty, unless committed on waters within the admiralty jurisdiction. (*The Belfast*, 7 Wall. 624; *The Clatsop Chief*, 8 Fed. Rep. 163; *Holmes v. Ohio & C. R. R. Co.*, 5 Fed. Rep. 75.) An action may be maintained to recover money lost by an agent in gambling with the cognizance of the master or an officer (*Smith v. Wilson*, 31 How. Pr. 272; Fed. Cas. No. 13128); or an action to recover goods placed by the master in the hands of a salvor on a fraudulent claim (*Houseman v. The North Carolina*, 15 Peters, 40); or an action against a wrongdoer, who detains on land property taken at sea (*Amer. Ins. Co. v. Johnson, Blatchf. & H.* 9; Fed. Cas. No. 303); or rescuing goods from a pirate (*Davison v. Sealskins*, 2 Paine, 324; Fed. Cas. No. 3661; *The North Carolina*, 15 Peters, 40); or for unlawful seizure of property. (*Manro v. The Almeida*, 10 Wheaton, 473; *Martins v. Ballard, Bee*, 51; Fed. Cas. No. 9175; *McGrath v. Candalero, Bee*, 64; Fed. Cas. No. 8810; *The Martha Anne, Olcott*, 18; Fed. Cas. No. 9146; *The Magdalena, Bee*, 11; Fed. Cas. No. 7216; *Johnson v. Chicago*, 8 Chic. L. N. 121; Fed. Cas. No. 7379); or for unlawful seizure of a vessel lying at the dock (*Jervy v. The Carolina*, 66 Fed. Rep. 1013.) So where a lighter is tortiously taken by the master of a vessel and used for her benefit. (*The Florence*, 2 Flip. 56; Fed. Cas. No. 4880.) So where property has been illegally and piratically taken on public waters. (*Martins v. Ballard, Bee*, 51; Fed. Cas. No. 9175.) A vessel employed and used with malicious intent for the purpose of arresting without process another vessel is responsible for the act. (*The Petersburg*, 68 Fed. Rep. 387.) Admiralty courts should not award to claimant damages for the unlawful arrest of a vessel unless there is proof of malice or bad faith on the part of the libellant. (*The Wasco*, 53 Fed. Rep.

546.) A party deprived of his property on the high seas, whether it be flotsam, jetsam, or ligam, has his remedy in admiralty. (Amer. Ins. Co. v. Johnson, Blatchf. & H. 9; Fed. Cas. No. 303.) So the admiralty may entertain an original suit for the restitution of property unlawfully seized for an alleged violation of the revenue laws. (Burke v. Trevitt, 1 Mason, 96; Fed. Cas. No. 2163.) So the admiralty has jurisdiction over an action to recover the value of lost baggage. (The H. M. Wright, Newb. Adm. 494; Fed. Cas. No. 17115); or of the maritime tort where a master refuses to give a bill of lading to the vendor, the vendor having absconded. (The Ferreri, 9 Fed. Rep. 468.) The court of admiralty protects only substantial rights, but nominal claims may be connected with substantial rights so as to confer jurisdiction. (Barnett v. Luther, 1 Curt. 434; Fed. Cas. No. 1025.) Tortious acts of the master to prevent a shipper from recovering possession of his goods, committed in port, do not fall within jurisdiction of the court. (The Zenobia, 1 Abb. Adm. 80; Fed. Cas. No. 18209.) Torts committed on land are not cognizable in the admiralty, and State legislation cannot confer the jurisdiction. (The Mary Stewart, 10 Fed. Rep. 137.) So the owner of a derrick which rests upon the bottom of navigable water cannot maintain a libel for injury to it, though it is entirely surrounded by water. (The Maud Webster, 8 Ben. 547; Fed. Cas. No. 9302.) For redress in matters of tort, courts of admiralty may proceed in personam, and in rem when the injury is subject of a maritime lien. (The Commerce, 1 Black. 574; The Rock Island Bridge, 6 Wall. 213; Manro v. Almeida, 10 Wheat. 473; The Martha Ann, Olcott, 18; Fed. Cas. No. 9146.) Locality is the test in cases of tort, by which to determine whether the wrongful act is one of admiralty cognizance. (Hermann v. Port

Blakely Mill Co., 69 Fed. Rep. 646; *The John C. Sweeney*, 55 Fed. Rep. 540; *The Mary Garrett*, 63 Fed. Rep. 1009.) Where the liability of the owners of a steamboat arose out of a maritime tort committed on water which was a navigable highway of commerce, the district court had jurisdiction of it in admiralty. (*The Tolchester*, 42 Fed. Rep. 180.) Damage to an elevator on a river bank, from being struck by a schooner through negligent towing, does not constitute a maritime tort within admiralty jurisdiction. (*Johnson v. Chicago & Pac. Elevator Co.*, 119 U. S. 388.) An injury to a vessel from negligence in operating a draw in a drawbridge is a maritime tort. (*Greenwood v. Town of Westport*, 60 Fed. Rep. 560.) But an injury to a pier by a vessel striking it is not a maritime tort. (*Homer Ramsdell Transp. Co. v. Compagnie General Transatlantique*, 63 Fed. Rep. 845.) Admiralty has jurisdiction of an action against a domestic corporation by a foreign corporation for damage to a vessel in a foreign port by a dangerous obstruction under water. (*Panama Ry. Co. v. Napier Shipping Co.*, 166 U. S. 280.)

Cases of collision.—District courts have jurisdiction of cases of collision on the great public navigable rivers, although within the body of a county or above the tide. (*Jackson v. The Magnolia*, 20 How. 296); or of collisions occurring on the high seas, between vessels owned by foreigners of different nationalities. (*The Belgenland*, 114 U. S. 355.) The liability of a passing steamer for injuries from her swell and suction has often been enforced in admiralty. (*The New York*, 34 Fed. Rep. 757.) The owner of a vessel libeled in rem for a collision may, by process in personam, bring into the suit other parties not her owners, also liable for the same collision. (*Joice v. Canal Boats*, 32 Fed. Rep. 553.) A

libel in rem will lie against a raft for collision on navigable waters. (*Seabrook v. Raft of Railroad Cross-Ties*, 40 Fed. Rep. 596.) The test is the locality of the thing injured, and not of the thing inflicting the injury. (*Boston v. Crowley* [C. C. D. Mass.] 38 Fed. Rep. 202; see *Ex parte Gordon*, 104 U. S. 515.) Admiralty has no jurisdiction to entertain in a suit in rem for damages resulting from a collision, a cross-libel for unliquidated damages caused by an entirely different collision. (*The Frank Gilmore*, 73 Fed. Rep. 686.) The findings of a district court in a collision case will not be disturbed when they involve doubtful questions of fact depending upon conflicting testimony. (*The Express*, 1 U. S. App. 658; 52 Fed. Rep. 890.)

Damages for injuries to property.—The admiralty has jurisdiction over actions for damages arising from a collision on navigable waters (*Waring v. Clarke*, 5 How. 441; *The Pennsylvania*, 9 Blatchf. 451; Fed. Cas. No. 10950; *The Lotty, Olcott*, 329; Fed. Cas. No. 8524; *The Grand Republic*, 10 Fed. Rep. 393); in such cases the jurisdiction rests on the maritime tort. (*The Grand Republic*, 10 Fed. Rep. 398.) They have jurisdiction in case of collision on the high seas, between foreign vessels. (*The Belgenland*, 9 Fed. Rep. 576; *Thommasen v. Whitwill*, 12 Fed. Rep. 891); and a foreign consul may maintain suit for damages caused by an American vessel. (*The Sapphire*, 11 Wall. 164.) Over suits in personam for damages growing out of a collision its jurisdiction is not exclusive of the State courts (*Schoonmaker v. Davidson*, 1 Morr. Trans. 46); but courts of the United States have exclusive jurisdiction over collisions on the Ohio river (*Schoonmaker v. Gilmore*, 102 U. S. 118), and they have jurisdiction in rem in that part of the St. Lawrence which is within the district (*The East*, 9 Ben. 76; Fed. Cas. No. 4251; or

over a collision between a tug and canal boat engaged in harbor service (The Volunteer, Brown Adm. 159; Fed. Cas. No. 16990); or on navigable waters within the body of a county. (The Lamar, 8 The Reporter, 275; Fed. Cas. No. 2120.) Negligence is no defense to an action for collision. (The James M. Thompson, 12 Fed. Rep. 189.) Admiralty entertains jurisdiction on proceedings arising ex contractu or quasi ex contractu, or delicto or quasi delicto (Banta v. McNeil, 5 Ben. 74; Fed. Cas. No. 966); but not of torts or injuries in rem or in personam in foreign countries, nor of contracts made there which were not of a maritime nature. (De Lovio v. Boit, 2 Gall. 398; Fed. Cas. No. 3776.) The admiralty has jurisdiction of an action for negligence in towing a vessel, although the voyage was between two ports in the same State (The Brooklyn, 2 Ben. 547; Fed. Cas. No. 1938); or of an action for injury to a pier by negligence in discharging cargo, unless the pier was a part of the land (New York v. Hickland, 6 Ben. 289; Fed. Cas. No. 10196; Northwestern U. Packet Co. v. Atlee, 2 Dill. 479; Fed. Cas. No. 10341); or for damages to a floating dry dock, although moored to the land. (The Ceres, Fed. Cas. No. 12881; see Hagan v. Brockie, 11 Fed. Rep. 745.) An injury to a vessel from negligence in operating a draw in a drawbridge is a maritime tort. (Greenwood v. Town of Westport, 60 Fed. Rep. 560.) Where the substance of the tort was committed on the high seas, if it be all a continuous act, jurisdiction attaches, though part of the transaction took place on land and within the body of a county. (Steele v. Thacher, 1 Ware, 91; Fed. Cas. No. 13348; Plummer v. Webb, 1 Ware, 91; Fed. Cas. No. 11234.) But if the damage resulted on land, admiralty has no jurisdiction. (The John C. Sweeney, 55 Fed. Rep. 540; Price v. The Belle of the Coast, 66 Fed. Rep. 62; Hermann v. Port Blakely

Mill Co., 69 Fed. Rep. 646; *The Mary Garrett*, 63 Fed. Rep. 1009.) It has jurisdiction of an action for damages occasioned by negligence in leaving obstructions to impede navigation (*Philadelphia etc. R. R. Co. v. Towboat Co.*, 23 How. 209), or by obstructions in a navigable river (*Northwestern U. P. Co. v. Atlee*, 2 Dill. 479; Fed. Cas. No. 10341); and a bridge built under the sanction of an act of the legislature, in so far as it fails to comply with the same, is such an unauthorized obstruction. (*Oregon City Transp. Co. v. Columbia St. Bridge Co.*, 53 Fed. Rep. 549.) It has no jurisdiction of an action for damages caused to a bridge by negligence of a vessel (*The Neil Cochran*, 1 Brown Adm. 162; Fed. Cas. No. 10087); nor to a wharf (*The Ottawa*, 1 Brown Adm. 356; Fed. Cas. No. 10616; *The John C. Sweeney*, 55 Fed. Rep. 540; *Homer Ramsdell Transp. Co. v. Compagnie Transatlantique*, 63 Fed. Rep. 845); nor for injury to buildings on land by fire through negligence of those in charge of the vessel. (*The Plymouth*, 3 Wall. 20. Jurisdiction attaches only to tortious acts on board the vessel. (*The Plymouth*, 3 Wall. 20.) So no action can be maintained for damages from negligence in hauling a vessel up to be placed in the yard for repairs. (*Ransom v. Mayo*, 3 Blatchf. 70; Fed. Cas. No. 11571.) The district court has jurisdiction of an action in rem against a vessel for damaging a raft of logs while in navigable waters. (*Cartier v. The F. & P. M. No. 2*, 33 Fed. Rep. 511.)

Limited liability act.—Courts of admiralty have jurisdiction of cases arising under the limited liability act. (*Norwich Co. v. Wright*, 13 Wall. 104; *In re Long Island Trans. Co.*, 5 Fed. Rep. 599; *Ex parte Slayton*, 4 Morr. Trans. 207.) Although a court of admiralty takes possession of a vessel under this act, yet it cannot enjoin a pending action against the owner in a State court. (*Hill Manufacturing Co. v. Provi-*

dence & N. Y. S. Co., 113 Mass. 495.) The law of limited liability of shipowners is a part of our maritime code, coextensive with the general admiralty and maritime jurisdiction, on the sea and the great inland lakes and the navigable waters connecting therewith. (*Waring v. Clarke*, 5 How. 441; *Jackson v. The Magnolia*, 20 How. 296; *The Commerce*, 1 Black, 574; *Ex parte Garnett*, 141 U. S. 1.) It is sufficient to give jurisdiction in a suit for a limitation of liability that some of the joint owners of a vessel, whose shares were uninsured and so could not be sold at an underwriter's sale, have transferred their title in what remains of the vessel to the trustee. (*In re Meyer*, 74 Fed. Rep. 881.) Jurisdiction of the district court, when once acquired, of an action for loss or damages to persons or goods, is exclusive; and it is the duty of all other courts to suspend proceedings, dismiss the suit, and refer the whole matter to the district court. (*Black v. Southern P. R. Co.*, 39 Fed. Rep. 565.) The circuit courts have no jurisdiction of proceedings to limit a shipowner's liability, under U. S. Rev. Stats., secs. 4282-4285; such proceedings are enforceable in district courts. (*Elwell v. Geibel*, 33 Fed. Rep. 71.) The power of Congress to prescribe the procedure in admiralty is not necessarily referable to the commercial clause of the Constitution, therefore the fact that the vessel was customarily employed not in foreign or interstate commerce was immaterial. (*The Tolchester*, 42 Fed. Rep. 180.) Federal courts may appoint receivers to control suits against owners. (*Providence etc. Co. v. Hill Mfg. Co.*, 109 U. S. 578.) The fact that owners claiming the benefit of limited liability succeed on that issue, and are therefore so far entitled to costs, will not relieve them from costs of the main issue, which was raised by a denial of negligence, if they are defeated on that point. (*The*

Leonard Richards, 41 Fed. Rep. 818. See, also, *In re Harris*, 14 U. S. App. 506; 57 Fed. Rep. 243.) The filing of a libel and petition for limited liability in the proper district court of the United States by the owner of the vessel in fault for collision, with the offer to give the proper stipulation, confers jurisdiction on the court, and no subsequent irregularity in procedure can take away such jurisdiction. (*Morrison v. District Court*, 147 U. S. 14.)

Proceedings.—The court may proceed either in rem or in personam. (*Amer. Ins. Co. v. Johnson*, Blatchf. & H. 9; Fed. Cas. No. 303; *The Merchant*, Abb. Adm. 1; Fed. Cas. No. 9434.) If the admiralty has jurisdiction over the matter in a proceeding in rem, it has jurisdiction in personam. (*Davis v. Child*, 2 Ware, 78; Fed. Cas. No. 3628.) Over maritime contracts it has jurisdiction in personam as well as in rem. (*Andrews v. Wall*, 3 How. 568; *The Jerusalem*, 2 Gall. 345; Fed. Cas. No. 7294; *The Volunteer*, 1 Sum. 551; Fed. Cas. No. 16991; *The Draco*, 2 Sum. 157; Fed. Cas. No. 4057; contra, *The James & Catharine*, Bald. 544; Fed. Cas. No. 756; see *The Scotland*, 105 U. S. 24.) The owner of a vessel may institute proceedings to obtain the benefit of the limitation of liability provided for by sections 4284, 4285 of the Revised Statutes, without waiting for a suit to be begun against him or his vessel for the loss out of which the liability arises. (*Ex parte Slayton*, 105 U. S. 451); and the court acquires jurisdiction by his filing a petition for limited liability with the offer to give the proper stipulation. (*In re Morrison*, 147 U. S. 14.) The stipulation stands in place of the vessel and her freight. (*Id.*) Proceedings to limit the liability of shipowners for loss or damage to goods supersede all other actions for the same loss or damages, upon the matter being properly pleaded therein. No injunction

from the district court is necessary to give them such effect. (*Providence & N. Y. S. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578; *In re Meyer*, 74 Fed. Rep. 881.) A court of admiralty in which is pending a suit for limitation of liability may enjoin the prosecution of suits in State courts against such shipowners. (*In re Whitelaw*, 71 Fed. Rep. 733.) A petition under the 54th admiralty rule may be filed after a trial of the cause of collision upon its merits, and a final decree thereon. (*N. Y. & Wilmington S. S. Co. v. Mount*, 103 U. S. 239.) It is not necessary, in order to sustain the proceeding for limited liability, that the owner of the vessel or persons claiming damages should be personally served with notice thereof within the district where the proceedings are taken, or that the vessel doing the injury should be taken and held by the court. (*In re Morrison*, 147 U. S. 14.)

Procedure in rem.—A proceeding in rem is to give effect to a maritime lien arising either *ex contractu* or *ex delicto*, and such a lien must exist to form a basis for the proceeding. (*The Rock Island Bridge*, 6 Wall. 213; *The General Smith*, 4 Wheat. 438; *The Perseverance*, Blatch. & H. 385; Fed. Cas. No. 11017; *The Pacific*, 1 Blatchf. 569; Fed. Cas. No. 10643; *The Kate Tremaine*, 5 Ben. 60; Fed. Cas. No. 7622; *The Hornet*, Crabbe, 426; Fed. Cas. No. 1640; *Beane v. The Mayurka*, 2 Curt. 72; Fed. Cas. No. 1175; *The Draco*, 2 Sum. 157; Fed. Cas. No. 4057; *The Maggie Hammond*, 9 Wall. 435.) In proceedings in rem, the thing in litigation must be in the custody of the law, and jurisdiction depends upon a valid seizure and control of the res by the marshal. (*Taylor v. Carryl*, 20 How. 583; *The Commerce*, 1 Black, 574; *The Robert Fulton*, 1 Paine, 620; Fed. Cas. No. 11890; *The Gazelle*, 1 Sprague, 378; Fed. Cas. No. 5289.) The *locus sitae* necessarily gives jurisdiction (*The Bee*, 1 Ware, 332; Fed. Cas. No. 1219; *The Ada*, 2 Ware,

208; Fed. Cas. No. 38; *The Commerce*, 1 Black, 574; *The Western Metropolis*, 28 How. Pr. 283; Fed. Cas. No. 14114; *The Erie*, 3 Cliff. 456; Fed. Cas. No. 7765; *The E. McChesney*, 8 Ben. 150; Fed. Cas. No. 4463; and it is of no importance to whom the property belongs. (*Clarke v. Navigation Co.*, 1 Story, 531; Fed. Cas. No. 2859.) The only requirements necessary to give jurisdiction to a court of admiralty of a suit in rem are, first, that the contract sued upon is a maritime contract; and second, that the property proceeded against is within the lawful custody of the court. (*The Resolute*, 168 U. S. 437.) So if property is brought within control of the court, jurisdiction is complete. (*The Rio Grande*, 23 Wall. 458; *The Little Charles*, 1 Brock. 347; Fed. Cas. No. 15612.) A proceeding in rem is not a common-law remedy, but a proceeding under the civil law, and cannot be used in common-law courts unless given by statute (*The Moses Taylor*, 4 Wall. 411; *Hine v. Trevor*, 4 Wall. 555; *The John Richards*, Newb. Adm. 73; Fed. Cas. No. 11827; *The Golden Gate*, Newb. Adm. 296; Fed. Cas. No. 574), and no form of action at common law can be regarded as a current remedy with the admiralty proceeding in rem (*The Belfast*, 7 Wall. 624); nor can a State law confer jurisdiction on a State court to entertain a proceeding in rem to enforce maritime lien in a maritime cause of action (*The Moses Taylor*, 4 Wall. 411; *Hine v. The Trevor*, 4 Wall. 555.) A breach of an executory contract to carry a passenger on a particular vessel, where the passenger has not placed himself within the care of the vessel, will not support a suit in rem. (*The Eugene*, 83 Fed. Rep. 222.) A breach by a propeller of a contract to tow a vessel renders the propeller liable in rem. (*The Oscoda*, 66 Fed. Rep. 347.) If it has jurisdiction in personam while proceeding in rem, its decree cannot be collaterally impeached.

(Case v. Wooley, 6 Dana, 37.) So its decision as to whether a vessel is domestic or foreign is conclusive (The Rio Grande, 23 Wall. 458); and, although a libel is dismissed for want of jurisdiction, libelant is not liable in trespass for taking the vessel. (Thompson v. Lyle, 3 Watts & S. 166.) A lien of a ship's agents in a foreign port, for advances for general average arising out of the jettison of a part of the cargo, is enforceable by suit in rem in admiralty. (The Dora, 34 Fed. Rep. 343.) Mere delay for the period of the State statute of limitations in bringing a suit in rem is not sufficient of itself to justify a court in refusing to entertain a suit. (The Queen, 78 Fed. Rep. 155.) The fact that the contract of affreightment is a personal contract does not prevent it from being a contract on which a libel in rem against the ship may be maintained. (The Queen, 61 Fed. Rep. 213.) A warrant of arrest issued by the clerk in the absence of the judge, and contrary to the rule of court, to recover seaman's wages, is void. (The Berkeley, 58 Fed. Rep. 920.) Where a suit in rem is dismissed because the court has no jurisdiction over the res the court can make no decree as to costs. (The Lindrup, 70 Fed. Rep. 718.)

Libels in rem may be prosecuted in any district where the property is found. (Coggshall v. United States, "The Slaver Reindeer," 2 Wall. 383.) The district court of the district where the seizure was made, and not of that where the offense was committed, has jurisdiction of proceedings in rem for an alleged forfeiture. (The Merino, 9 Wheat. 391.) A vessel sailing on a foreign voyage is to be tried for sailing under a coasting license in the judicial district in which the seizure is made, without regard to the district where the forfeiture accrued. (Keene v. United States, 5 Cranch, 304.) A valid seizure and actual control of the res gives jurisdiction of the

subject matter. (The Rio Grande, 23 Wall. 458.) An unnecessary statement in a marshal's return as to the place of seizure is not conclusive of the court's jurisdiction of the res. (The Lindrup, 70 Fed. Rep. 718.) If the seizure is made on the high seas or within the territory of a foreign power, the jurisdiction is conferred on the court of the district where the property is carried and proceeded against. (The Merino, 9 Wheat. 391.) Where a vessel is sent by a receiver out of the jurisdiction of the court appointing him, and into a port of another State, an admiralty court of the latter State may enforce a lien for supplies there furnished by a proceeding in rem. (The Willamette Valley, 29 U. S. App. 447; 66 Fed. Rep. 565.) If a vessel was within the district at the time the libel is verified, but departs before the libel is filed, but returns after the libel is filed, it may be seized on alias monition, and jurisdiction is not defeated. (The Queen, 78 Fed. Rep. 155.)

Suits in personam.—The United States district court has jurisdiction generally of suits in personam upon maritime contracts. (Jutte v. Davis, 21 Pitts. L. J. N. S. 94.) A libel may be maintained for any cause within the jurisdiction wherever a monition can be served upon the libelee, or an attachment made of any personal property or credits of his. (Re Louisville Underwriters, 134 U. S. 488.) They have jurisdiction of a libel in personam against a corporation. (New England M. Ins. Co. v. Dunham, 11 Wall. 1; Ex parte Louisville Underwriters, 134 U. S. 488.) The existence of admiralty jurisdiction in a suit in personam is not dependent upon the existence of a right to proceed in rem, for jurisdiction depends not upon the existence of a maritime lien, but upon the subject matter of the contract. (Boutin v. Rudd. 53 U. S. App. 525; 82 Fed. Rep. 685.)

Courts of admiralty have jurisdiction of suits in personam on a bond for salvage given after delivery of the salved property in pursuance of a contract made before (*De Leon v. Leitch*, 65 Fed. Rep. 1002.)

Suits in rem and personam.—It is within the discretion of an admiralty court to entertain two libels for the same cause of action—one in personam and one in rem—where it renders a decree in favor of libelants in the former, and suspends the entry of a decree in the latter until it is ascertained whether it will be necessary to recur to the security given in the suit in rem (*La Normandie*, 14 U. S. App. 655; 58 Fed. Rep. 427.)

Saving of common-law remedy.—This clause was inserted to indicate that the common-law remedy was not taken away. (*New Jersey Co. v. Merchants' B. R.*, 6 How. 344.) It is a full recognition of a concurrent jurisdiction in common-law courts and courts of admiralty (*Wave v. Hyer, Blatchf. & H.* 235; Fed. Cas. No. 17297), and it does not render the jurisdiction of either court exclusive. (*Waring v. Clark*, 5 How. 441.) The intention is to save the remedy in those courts which proceed according to the course of the common law, as distinguished from the course of admiralty (*Steamboat Co. v. Chase*, 16 Wall. 522); and the snitor has the right of seeking redress in either court when it can be so obtained (*Dougan v. Champlain Transp. Co.* 56 N. Y. 1); he can maintain his action in the State court, although the liability of the owner of the vessel is limited by Congress (*Dougan v. Champlain Transp. Co.* 56 N. Y. 1; *Baird v. Daly*, 57 N. Y. 237; contra; *Chisholm v. Northern Trans. Co.* 61 Barb. 363); as an action to recover damages for a collision. (*Stewart v. Hartz*, 3 Bush, 438; *Digby v. Kenton Iron Co.*, 8 Bush, 166; *Sawyer v. Eastern Steamboat Co.*, 46 Me. 400.) Courts of common law deal with ships as personal property,

liable to their remedial process of attachment and execution (*Taylor v. Carrl*, 20 How. 583; *The B. F. Woolsey*, 3 Fed. Rep. 457); and such personal actions may be maintained against their owners as the common law gives (*Trevor v. The Hine*, 17 Iowa, 349; *Leon v. Galceran*, 11 Wall. 185); so a creditor may sue the owner in a State court to recover for supplies furnished at the home port of the vessel or elsewhere. (*Crawford v. Roberts*, 50 Cal. 235; *Southern Dry Dock Co. v. The J. D. Perry*, 23 La. An. 39.) A State court has jurisdiction of an action for damages for loss of goods through negligence of the carrier (*Rake v. The Owners*, 6 Bush, 25; *Parisot v. Helm*, 52 Miss. 617); or for damages for breach of contract of affreightment (*Bohannan v. Hammond*, 42 Cal. 228; *Home Ins. Co. v. Northwestern P. Co.*, 52 Iowa, 223; *Baird v. Daly*, 57 N. Y. 237); or of an action for damages for death caused by negligence (*Steamboat Co. v. Chase*, 16 Wall. 522; *Dougan v. Champlain Transp. Co.*, 56 N. Y. 1); or for a marine tort (*Stewart v. Hartz*, 3 Bush, 438; *Percival v. Hickey*, 18 Johns, 257); as an action for fire occasioned by negligence (*Chisholm v. Northern Trans. Co.*, 61 Barb. 363), or an action of replevin, although defendant claims title under a marshal's sale (*Daily v. Doe*, 3 Fed. Rep. 903); or on a stipulation taken in admiralty (*Lacaze v. State*, 1 Addis, 59); or an action for a penalty imposed by a city ordinance. (*Ogdensburg v. Lyons*, 7 Lans. 215.) A State court may maintain a bill in equity, as to redeem goods from a lien claimed for salvage services (*Cashmere v. De Wolfe*, 2 Sand. 379); or an action for compensation for salvage services where there has been an express contract. (*Albany City Ins. Co. v. Whitney*, 70 Pa. St. 248.) The State court may entertain a bill in equity filed by one of several owners of a vessel for a sale thereof and a division of the proceeds (*Andrews v. Betts*, 8 Hun,

322); but equitable remedies are not saved where suit is brought for the enforcement of a maritime contract. (The B. F. Woolsey, 3 Fed. Rep. 457.) The common law is not competent to afford a remedy, as between suitors having maritime claims against a vessel. (Stewart v. The Potomac Ferry Co., 5 Hughes, 372; 12 Fed. Rep. 296.) The concurrent jurisdiction of common-law courts does not deprive admiralty courts of jurisdiction. (Warring v. Clark, 5 How. 441; DeLovio v. Boit, 2 Gall.398; Fed. Cas. No. 3776.)

Over seizures and forfeitures.—Congress distinguishes between seizures on navigable waters and those not navigable, or seizures on land, the former being within the admiralty jurisdiction. (The Eagle, 8 Wall. 15; U. S. v. Winchester, 99 U. S. 372; U. S. v. La Vengeance, 3 Dall. 297; The Sally, 2 Cranch, 406; The Betsey, 4 Cranch, 443; Whelan v. U. S. 7 Cranch, 112; The Samuel, 1 Wheat. 9; The Margaret, 9 Wheat, 421; The Little Ann, 1 Paine, 40; Fed. Cas. No. 8397; Clark v. U. S., 2 Wash. C. C. 519; Fed. Cas. 2837; The Queen, 4 Ben. 237, Fed. Cas. No. 16107; The Irma, Fed. Cas. No. 15444; Fourteen Packages, Gilp. 235. Fed. Cas. No. 15,151; One Hundred and Thirty Barrels, 1 Bond 587, Fed. Cas. No. 15938.) It does not extend to seizures on land. (U. S. v. Winchester, 99 U. S. 372.) In the trial of all causes of seizure on land, the district court sits as a court of common law. (The Sarah, 8 Wheat. 391.) Before judicial cognizance can attach upon a forfeiture in rem, there must be a seizure (The Merino, 9 Wheat. 391; The Washington, 4 Blatch. 101, Fed. Cas. No. 17221; The Ann, 9 Cranch, 289; The May, 6 Biss. 243; Fed. Cas. No. 9330; United States v. Ninety-two Barrels, 8 Blatchf. 480; Fed. Cas. No. 15892; The Oconto, 5 Biss. 460; Fed. Cas. No. 10421; The Fideliter, 1 Sawy. 153; Fed. Cas. No. 4755; An Open Boat, 5 Mason, 232; Fed. Cas. No. 15968; and the seiz-

ure must be good and subsisting when the libel or information is filed (*The Ann*, 9 Cranch, 289; *United States v. The Little Charles*, 1 Brock. 347; Fed. Cas. No. 15612); but if there is an agreement to that effect, it continues subsisting although the vessel is being navigated. (*The Abby*, 1 Mason, 360; Fed. Cas. No. 14.) The seizure must be made within the district to vest jurisdiction in rem (*The Little Ann*, 1 Paine, 40; Fed. Cas. No. 8397; see *The Merino*, 9 Wheat. 398); unless made on the high seas, when jurisdiction attaches to the court into whose district the property is carried (*The Merino*, 9 Wheat. 391; *The Abby*, 1 Mason, 360; Fed. Cas. No. 14; *The Little Ann*, 1 Paine, 40; Fed. Cas. No. 8397); in order to institute and perfect proceedings in rem the thing must be actually or constructively within the reach of the court. (*Keene v. U. S.*, 5 Cranch, 304; *The Reindeer*, 2 Wall. 383; *The Ann*, 9 Cranch, 289; *The Octavia*, 1 Gall. 488; Fed. Cas. No. 10422; *The Abby*, 1 Mason, 360; Fed. Cas. No. 14.) An information in rem to enforce a forfeiture is a civil action, and in no degree touches the person of the offender. (*U. S. v. La Vengeance*, 3 Dall. 297; *The Palmyra*, 12 Wheat. 1.) The court directs the sale of the vessel upon condemnation, and decrees a distribution of the proceeds according to law. (*McLane v. U. S.*, 6 Peters, 404.) In an information in rem on seizure for undervaluation, if the decree is in favor of the claimant, the court cannot make restitution conditional upon payment of duties or filing a re-exportation bond. (*U. S. v. Three Hundred and Fifty Chests*, 12 Wheat. 486; *U. S. v. Five Hundred Boxes*, 2 Abb. U. S. 500; Fed. Cas. 15116.)

Prize jurisdiction.—The district court has jurisdiction over questions of prize or no prize. (*The Betsey*, 3 Dall. 6; *Penhallow v. Doane*, 3 Dall. 54; *The Amiable Nancy*, 3 Wheat. 546; *Jecker v. Montgom-*

ery, 13 How. 498; *Jennings v. Carson*, 4 Cranch, 2; *The Admiral*, 3 Wall. 603; *The Emulous*, 1 Gall. 563; Fed. Cas. No. 4,479; *The Anna*, Blatchf. Prize, 337, Fed. Cas. No. 402; *The Magdalena*, Bee, 11, Fed. Cas. No. 7216; *The Amy Warwick*, 2 Sprague, 123, Fed. Cas. No. 341.) It embraces the whole question, unrestrained by locality of the capture as prize (*Johnson v. Falconer*, Van Ness, 1; Fed. Cas. No. 7417; *The Emulous*, 1 Gall. 563; Fed. Cas. No. 4479; *Two Hundred and Eighty-two Bales*, Blatchf. Prize, 302; Fed. Cas. No. 14291; *U. S. v. Bales*, 1 Woolw. 236; Fed. Cas. No. 16583); as on inland navigable waters (*U. S. v. Bales*, 1 Woolw. 236; Fed. Cas. No. 16583); or on a wharf (*Pieces of Merchandise*, 2 Sprague, 233; Fed. Cas. No. 12915); or in a port (*The Emulous*, 1 Gall. 563; Fed. Cas. No. 4,479; see *Cook v. The U. S.*, 9 Ct. of Cl. 288); and whether the capture is made by a naval force or conjointly with land forces (*Bales*, Blatchf. Prize, 302, Fed. Cas. No. 14,291); but it has no jurisdiction of captures on land, unless the element of force operated from or on the water. (*U. S. v. Winchester*, 99 U. S. 372; *U. S. v. Bales*, 1 Woolw. 236, Fed. Cas. No. 16,583; *Cook v. U. S.*, 9 Ct. of Cl. 288.) The district court has jurisdiction of all matters to be determined by *jus belli*. (*Sasportas v. Jennings*, 1 Bay. 470; see *Percival v. Hickey*, 18 Johns. 257.) So of all matters incident to captures. (*Sasportas v. Jennings*, 1 Bay. 470.) The common-law courts have no jurisdiction of actions arising out of a capture as prize, the jurisdiction in admiralty is exclusive. (*Doane v. Penhallow*, 1 Dall. 238; *S. C.* 3 Dall. 54; *Ross v. Ritzenhouse*, 2 Dall. 160; *Novion v. Hallett*, 16 Johns. 327; *Sasportas v. Jennings*, 1 Bay, 470; *Simpson v. Nadeau*, 1 Com. & N. (N. C.) 115; *Cheriot v. Foussat*, 3 Binn. 220; *Maisonnaire v. Keating*, 2 Gall. 325, Fed. Cas. No. 8,978; *Hallett v. Lamothe*, 3 Murph. 279; but see *Taxier v. Sweet*, 2 Dall. 81.) If the capture is

made on navigable waters the court has jurisdiction, although it was made outside the territorial jurisdiction of the court (*The Tropic Wind*, Blatchf. Prize, 64 Fed. Cas. No. 14186; *The Hiawatha*, Blatchf. Prize, 1, Fed. Cas. No. 6451; *Bales*, Blatchf. Prize, 302, Fed. Cas. No. 14,291); and the jurisdiction attaches in any court to which the prize may be brought (*The Peterhoff*, Blatchf. Prize, 463, Fed. Cas. No. 11,024); it has jurisdiction although the vessel was destroyed because unfit to send into port (*The Zaralla*, Blatchf. Prize, 173, Fed. Cas. No. 18,203); and although it lies in a foreign neutral port. (*The Arabella*, 2 Gall. 368, Fed. Cas. No. 501.) Whenever the prize or its proceeds can be traced to the hands of any person whatever, jurisdiction attaches (*Jecker v. Montgomery*, 13 How. 498). So if government appropriates the captured vessel to its own use jurisdiction attaches, although it is not brought into the district (*The Advocate*, Blatchf. Prize, 142, Fed. Cas. No. 94; *The A. J. View*, Blatchf. Prize, 133, Fed. Cas. No. 3,777; *The Osceola*, Blatchf. Prize, 150; Fed. Cas. No. 10601; *The Olive*, Blatchf. Prize, 185; Fed. Cas. No. 10,487); and the court will proceed to adjudge and condemn or award restitution, although not actually within its possession or control. (*Jecker v. Montgomery*, 13 How. 498; *The Zaralla*, Blatchf. Prize, 173, Fed. Cas. No. 18,203; *The Edward Barnard*, Blatchf. Prize, 122, Fed. Cas. No. 4,291; *The Joseph H. Toone*, Blatchf. Prize, 223, Fed. Cas. No. 7,541; *The Pevensey*, Blatchf. Prize, 628, Fed. Cas. No. 11,054; *The A. J. View*, Blatchf. Prize, 143, Fed. Cas. No. 118.) District courts have exclusive jurisdiction over ransom bills (*Maisonnaire v. Keating*, 2 Gall. 325, Fed. Cas. No. 8,978); and captors may change the forum and apply for redress in any country where the property is found. (*Maisonnaire v. Keating*, 2 Gall. 325, Fed. Cas. No. 8,978.) The district court

is but one court, with different branches of admiralty jurisdiction as well as other and distinct subjects. (U. S. v. Weed, 5 Wall. 62; *The Siren*, 7 Wall. 152.) A libel on the instance side of the court cannot be filed to enforce a claim or lien after the vessel has been taken as prize; but all claims can be adjusted on the prize proceedings. (*The Nassau*, 4 Wall. 634.)

Prize—Captures by foreign vessels.—Acts done under the authority of a sovereign cannot be redressed by the tribunals of another sovereign (*L'Invincible*, 1 Wheat. 238); so if a foreign vessel brings its prize into this country the district court cannot detain her to inquire into the circumstances of the capture (*Talbot v. Jansen*, 3 Dall. 133; *The Divina Pastora*, 4 Wheat. 52; *Castello v. Bouteille*, Bee, 29; Cas. No. 13291; *Salderondo v. Nostra Signora Del Camino*, Bee, 43; Fed. Cas. No. 12247; *Martin v. Ballard*, Bee, 51; Fed. Cas. No. 9175; *The William*, 1 Pet. Adm. 12; Fed. Cas. No. 4790; *Moxon v. The Fanny*, 2 Pet. Adm. 309; Fed. Cas. No. 9895); as a neutral tribunal has no jurisdiction over a belligerent cruiser (*L'Invincible*, 1 Wheat. 238; U. S. v. Peters, 3 Dall. 121; *Del Col. v. Arnold*, 3 Dall. 333; *Glass v. The Betsy*, 3 Dall. 6); but neutral courts may entertain jurisdiction to enquire whether the capture was made under a lawful commission, or whether fraudulently or piratically, or in violation of its territorial rights (*L'Invincible*, 1 Wheat. 238; *Talbot v. Jansen*, 3 Dall. 133); but not over a claim for damages for a tortious capture. (*Juando v. Taylor*, 2 Paine, 652; Fed. Cas. No. 7558.) If the capture is made within the territorial limits of this country by a foreign belligerent (*The Alerta*, 9 Cranch, 359; *Talbot v. Jansen*, 3 Dall. 133); or if the foreign captor has violated the neutrality laws of this country (*The Estrella*, 4 Wheat. 298), or if the foreign privateer has been illegally equipped in

this country (*Talbot v. Jansen*, 3 Dall. 133; *U. S. v. Peters*, 3 Dall. 121; *The Alerta*, 9 Cranch, 359; *L'Invincible*, 1 Wheat. 238), or if the force of the foreign vessel is illegally augmented in this country (*The Alerta*, 9 Cranch, 359; *The Estrella*, 4 Wheat. 298; *The Santissima Trinidad*, 7 Wheat. 283), the district court will award restitution although she did not make the capture until she had obtained her commission at the belligerent port (*The Gran Para*, 7 Wheat. 471), and a vessel sent to a foreign country for sale is a foreign vessel. (*The Santissima Trinidad*, 7 Wheat. 283.) If the prize tribunal of the captor awards restitution for an illegal capture, the district court may entertain jurisdiction of a suit for damages. (*The Candalero*, Bee, 60, Fed. Cas. No. 8809; see *Juando v. Taylor*, 2 Paine, 652; Fed. Cas. No. 7,558). A prize court of one nation may carry into effect a decree of a prize court in another nation. (*Penhallow v. Doane*, 3 Dall. 54; *Jennings v. Carson*, 4 Cranch, 2; *The Candalero*, Bee, 60, Fed. Cas. No. 8809.) In case of recapture, escape, or voluntary discharge, the rights of the courts of the belligerents are gone (*L'Invincible*, 1 Wheat. 238); so, where an abandoned prize is brought in by a neutral, the district court, after deducting from the proceeds compensation for the salvage service, the residue will be awarded to the last possessor. (*McDonough v. Dannery*, 3 Dall. 188; *L'Invincible*, 1 Wheat. 238; *Del Col v. Arnold*, 3 Dall. 333.)

If the court enters a decree for condemnation under the confiscation laws without previous seizure the decree will be deemed void, even in a collateral action. (*U. S. v. Winchester*, 99 U. S. 372.) So if property is not a lawful prize of war a judgment of condemnation is no protection to the captors. (*Slocum v. Wheeler*, 1 Conn. 429.) A court of common law has jurisdiction of an action for the value of a vessel

and cargo taken on the high seas and adjudged no prize. (*Taxier v. Sweet* [Sup. Ct. Pa.] 2 Dall. 81.)

Subd. 12—Suits to redress deprivation of constitutional rights.—The district court has jurisdiction by Rev. Stats. § 563, to determine whether colored children of school age who are refused admission to a school are denied the equal protection of the laws (*Davenport v. Cloverport*, 72 Fed. Rep. 689).

Clause 15—Suits by and against national banking associations.—A national bank may sue in the district court (*Kennedy v. Gibson*, 8 Wall. 498); or it may file a bill to obtain the appointment of a receiver for an insolvent corporation. (*Fifth Nat. Bank v. P. & C. R. R. Co.*, 26 Int. Rev. Rec. 78.) So it may be sued in the district court. (*Cadle v. Tracy*, 11 Blatchf. 101, Fed. Cas. No. 2,279.) It can be sued only in the courts designated by congressional acts. (*Cadle v. Tracy*, 11 Blatchf. 101, Fed. Cas. No. 2279); and may sue and be sued in the United States courts. (*Kennedy v. Gibson*, 8 Wall. 506.) Section 5,198 of the revised statutes, title National Banks, gives the right to recover back twice the amount of the interest illegally received by a national bank. (*First Nat. Bank of Charlotte v. Morgan*, 132 U. S. 141.)

Clause 17—Over consuls.—Of a suit brought by an alien against the consul of his nation to recover official fees improperly exacted (*Lorway v. Lusada*, 1 Low. 77, Fed. Cas. No. 8,517); but if sued jointly, if he is not liable, no judgment can be entered. (*Bixby v. Janssen*, 6 Blatchf. 315, Fed. Cas. No. 1,452.) The district court of the United States has jurisdiction of a suit for libel against a consul general, who is not the diplomatic representative of a government. (*Re Baiz*, 135 U. S. 403.) The district court of the United States has jurisdiction of a suit against a citizen of the United States who is a consul general of a for-

eign government, for libel. (Re Baiz, 135 U. S. 403.) A State court cannot obtain jurisdiction of civil suits against foreign consuls. (Davis v. Packard, 7 Peters, 276.) A suit on a recognizance is an original proceeding, under the judiciary act of 1789, giving exclusive jurisdiction to courts of the United States over suits against a foreign consul. (Davis v. Packard, 7 Peters, 276.)

§ 49 a. Jurisdiction in bankruptcy cases.—The district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions; (2) allow claims, disallow claims, recon-

sider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors, or trustees, or other similar controlling bodies, of corporations for violation of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estate; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered: (9) confirm or reject compositions between debtors and their creditors, and set aside

compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated. (30 U. S. Stats. 545.)

§ 50 (5391). Offenses committed in places ceded to the United States.—If any offense be committed in any place which has been or may hereafter be ceded to, and under the jurisdiction of the United States, which offense is not prohibited, or the punishment thereof is not specially provided for by any law of the United States, such offense shall be liable to, and receive the same punishment as the laws of the State in which such place is situated, now in force, provide for the like offense when committed within the jurisdiction of such State, and no subsequent repeal of any such State law shall affect any prosecution for such offense in any court of the United States. (Rev. Stats. sec. 5391.)

Selling liquor to Indians.—The offense of selling liquor to an Indian cognizable in the district courts, was, by virtue of the judiciary act of 1789, cognizable also in the circuit courts. (United States v. Holiday, 3 Wall. 407.) The introduction of intoxicating liquors into the Indian country, within the meaning of U. S. Rev. Stat. § 2.139, is taking such liquors into the Indian country as the place of destination or use, but does not include transportation through an Indian country as an article of commerce. (United States v. 29 Gallons of Whiskey, 45 Fed. Rep. 847.)

§ 50 a. Jurisdiction of offenses committed in places under exclusive federal control.—When any offense is committed in any place, jurisdiction over which has been retained by the United States or ceded to it by a State, or which has been purchased with the consent of a State for the erection of a fort, magazine, arsenal, dockyard, or other need-

ful building or structure, the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall, upon conviction in a circuit or district court of the United States for the district in which the offense was committed, be liable to and receive the same punishment as the laws of the State in which such place is situated now provide for the like offense when committed within the jurisdiction of such State, and the said courts are hereby vested with jurisdiction for such purpose; and no subsequent repeal of any such State law shall affect any such prosecution. (30 U. S. Stats. 717.)

§ 50 b. **Violation of act regulating sealing.**—That any violation of this act, or of the regulations made thereunder, may be prosecuted either in the district court of Alaska or in any district court of the United States in California, Oregon, or Washington. (28 U. S. Stats. 54.)

§ 51. **Offenses committed upon great lakes.**—Every person who shall, upon any vessel registered or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the great lakes, namely, Lake Superior, Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Lake Ontario, or any of the waters connecting any of the said lakes, commit or be guilty of any of the acts, neglects, or omissions, respectively, mentioned in chapter three of title seventy of the Revised Statutes of the United States, shall upon conviction thereof be punished with the same punish-

ments in the said title and chapter, respectively, affixed to the same offenses therein mentioned, respectively. (26 U. S. Stats. 424, sec. 1.)

§ 52. Jurisdiction of offenses committed upon the great lakes.—The circuit and district courts of the United States, respectively, are hereby vested with the same jurisdiction in respect of the offenses mentioned in the first section of this act that they by law have and possess in respect of the offenses in said chapter and title in the first section of this act mentioned, and said courts, respectively, are also for the purposes of this act vested with all and the same jurisdiction they, respectively, have by force of title thirteen, chapter three, and title thirteen, chapter seven, of the Revised Statutes of the United States. (26 U. S. Stats. 424, sec. 2.)

Offenses committed on lakes.—Territorial extent of the admiralty and maritime jurisdiction granted to the Federal government is not limited to tide waters, but extends to all public navigable lakes and rivers. (Ex parte Garnett, 141 U. S. 1: 35 l. ed. 631; act of Sept. 4, 1890, ante.) The Savannah river, from its mouth to the highest point to which it is navigable, is subject to the maritime law and admiralty jurisdiction of the United States. (Ex parte Garnett, 141 U. S. 1: 35 l. ed. 631.) Grand river is a navigable water of the United States, within the meaning of the acts of Congress of July 7, 1838, and Aug. 30, 1852. (The Daniel Ball v. United States, 10 Wall. 557.) The boundaries and limits of the admiralty and maritime jurisdiction are matters of judicial cognizance, and cannot be affected or controlled by legis-

lation, whether State or national. (The *St. Lawrence*, 1 Black, 522; The *Lottawanna*, 21 Wall. 558.) The act of Congress of February 26, 1845, conferring jurisdiction upon the United States district courts in certain cases upon the lakes and navigable waters connecting the same, is constitutional. (The *Genesee Chief v. Fitzhugh*, 12 How. 443; *Fretz v. Bull*, 12 How. 446; *Jackson v. Magnolia*, 20 How. 296; *Allen v. Newberry*, 21 How. 244.) The admiralty jurisdiction on the lakes and the waters connecting those lakes, is governed by the act of February 26, 1845. (The *Ad. Hine v. Trevor*, 4 Wall. 555.)

§ 53. Injury to person or property or deprivation of right under civil rights acts—Equal rights in inns.—That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude. (18 U. S. Stats. 336: 1 Sup. Rev. Stats. 148, sec. 1.)

Penalty for violation.—That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an

action of debt, with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year; *provided*, that all persons may elect to sue for the penalty aforesaid or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State; and provided further, that a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively. (Id. sec. 2.)

Jurisdiction.—That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; the district attorneys, marshals, and deputy marshals of the United States, and commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States, or territorial

court, as by law has cognizance of the offense, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other courts; *provided*, that nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person, whether by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars; *and provided further*, that a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney shall be a bar to either prosecution respectively. (Id.)

§ 54. Jurisdiction concurrent with court of claims.—The district courts of the United States shall have concurrent jurisdiction with the court of claims as to all matters named in the preceding section [claims against United States] where the amount of the claim does not exceed one thousand dollars. The jurisdiction hereby conferred upon the said circuit and district courts shall not extend to cases brought to recover fees, salary or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof. (24 U. S. Stats. 505, sec. 2, as amended, 30 U. S. Stats. 495.)

Note.—The above section does not authorize the courts to entertain a petition to cancel a judgment lien alleged to have been unlawfully placed upon the property of the petitioners by an officer of the United States, in an attempt to enforce a judgment recovered by the United States (*Holmes v. United States*, 78 Fed. Rep. 513). See generally, *United States v Saunders*, U. S. App. 79 Fed. Rep. 407; *McDonald v. United States*, 66 Fed. Rep. 255.)

§ 55. **Mandamus to compel performance of duty by carrier.**—District courts shall have jurisdiction upon the relation of any person, firm, or corporation to issue a writ of mandamus against a common carrier to compel him to move and transport traffic, or to furnish facilities for the transportation, under the Act of March 2, 1889, amendatory to the Act to Regulate Commerce, approved February 4, 1887.

§ 56 (564). **Seizures for forfeiture.**—Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section; or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district court into which the property so seized may be taken, and proceedings instituted; and the district

court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. (Rev. Stats. sec. 564. See secs. 5301, 5317.)

Original jurisdiction.—Its jurisdiction over such proceedings is original (*Lathrop v. Drake*, 91 U. S. 516; *Bachman v. Packard*, 2 Sawy. 264, Fed. Cas. No. 709); in the district where seizure is made (*Shearman v. Bingham*, 1 Low. 575, Fed. Cas. No. 12733); and is not ousted by decree of the State court. (In re Independent Ins. Co., 2 Low. 97, Fed. Cas. No. 7018.)

§ 56 a. **Seizures of obscene books, pictures, etc., imported from foreign countries.**—Any judge of any district or circuit court of the United States, within the proper district before whom complaint in writing of any violation of the two preceding sections [prohibiting the importation of obscene books, pictures, and of lottery tickets and medicine to secure abortion] is made to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief setting forth the grounds of such belief, and supported by oath or affirmation of the complainant, may issue conformably to the constitution, a warrant directed to the marshal, or any deputy marshal, in the proper district, directing him to search for, seize and take possession of any such article or thing mentioned in the two preceding sections, and to made due and immediate return thereof to the end that the same may be condemned and destroyed by proceedings which shall be conducted in the same manner as other proceed-

ings in the case of municipal seizure, and with the same right of appeal or writ of error. (30 U. S. Stats. 209.)

§ 57 (565). Prize causes after appeal.—Any district court may, notwithstanding an appeal to the Supreme Court, in any prize cause, make and execute all necessary orders for the custody and disposal of the prize property, and, in case of an appeal from a decree of condemnation, may proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. (Rev. Stats. sec. 565. See sec. 4637.)

§ 58 (566). Trial of issues of fact.—The trial of issues of fact in the district courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upwards, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different States and Territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it. (Rev. Stats. sec. 566.)

Trial of issues of fact.—The clause in the above section giving the parties a right to demand a jury

in certain cases, is inoperative to do more than make the verdict advisory, and does not change the powers of the admiralty judge who is still responsible for the decree rendered (*The City of Toledo*, 73 Fed. Rep. 220.) This clause excluded prize causes. (*The Eagle*, 8 Wall. 15), and does not apply to vessels engaged in the domestic commerce of a State (*The Genesee Chief v. Fitzhugh*, 12 How. 443; *Hine v. Trevor*, 4 Wall. 555; *The Coal Barge*, 3 Wall. Jr. 53, Fed. Cas. No. 7,458); but is confined to cases arising upon the lakes and navigable waters connecting them (*Hine v. Trevor*, 4 Wall. 555; *The Backus*, Newb. Adm. 1, Fed. Cas. No. 5,048); and it embraces artificial communications, such as canals. (*The Young America*, Newb. Adm. 101, Fed. Cas. No. 12,549. See generally *The Flora*, 1 Biss. 29, Fed. Cas. No. 4,878; *The Globe*, 2 Blatchf. 427, Fed. Cas. No. 5,483; *The Revenue Cutter*, Brown Adm. 76, Fed. Cas. No. 11,713; *The Volunteer*, Brown Adm. 159, Fed. Cas. No. 16,990; *The General Cass*, Brown Adm. 334, Fed. Cas. No. 5,307; *Allen v. Newberry*, 21 How. 244.)

Trial by jury.—Trial by jury is rather a mode of exercising jurisdiction than a substantial part of it (*The Eagle*, 8 Wall. 15); and although the court has no power to try an admiralty case by jury except as allowed by statute, yet it may submit a question of fact to commissioners or referees. (*Lee v. Thompson*, 3 Wood, 167, Fed. Cas. No. 8,202.) So the trial by jury may be waived by the parties. (*Henderson v. Distilled Spirits*, 14 Wall. 44.) The demand for a jury trial must show that the case falls within this section, (*Gillet v. Pierce*, Brown Adm. 553, Fed. Cas. No. 5,437.)

§ 59 (569). Jurisdiction in cases transferred from territorial courts.—When any territory is ad-

mitted as a State, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the superior court of such Territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court, and shall proceed to hear and determine the same. (Rev. Stats. sec. 569.)

Cases transferred from territorial courts.—This section includes civil and criminal cases, and under it this court can revise a judgment of the superior court which was transferred to the district court of the northern district of Florida. (*Forsyth v. U. S.*, 9 How. 571.) The supplementary act of 1848 (9 Stats. 212) applies only to cases that were pending in the territorial courts of Wisconsin, and not those pending in the supreme court at the time of its admission as a State. (*McNulty v. Batty*, 10 How. 72.) If the case pending is not of a federal character it cannot be transferred to the district court. (*McNulty v. Batty*, 10 How. 72; *Ames v. Colorado Central R. R. Co.*, 4 Dill. 251, Fed. Cas. No. 324; *Gaffney v. Gillette*. 4 Dill. 264, Fed. Cas. No. 5,168.)

§ 60 (570). **Commissioners to administer oaths to appraisers.**—Any district judge may appoint commissioners, before whom appraisers of vessels, or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. (See sec. 938; Rev. Stats. sec. 570.)

§ 61. Circuit court powers of certain district courts abolished.—Circuit court powers conferred on certain district courts by the Rev. Stats., sec. 655, were abolished by act of Congress approved February 6, 1889. (25 U. S. Stats. 655.)

CHAPTER V.
JUDICIAL CIRCUITS.

§ 62. Circuits.

§ 62 (604). Circuits.—The judicial districts of the United States are divided into nine circuits, as follows:

First. The first circuit includes the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit includes the districts of Vermont, Connecticut, and New York.

Third. The third circuit includes the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit includes the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit includes the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit includes the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit includes the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit includes the districts of Colorado, Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, North Dakota,¹ South Dakota,² Utah,⁴ and Wyoming.³

1 Added by 25 U. S. Stats. 682.

2 Added by 25 U. S. Stats. 682.

3 Added by 26 U. S. Stats. 225.

4 Added by 28 U. S. Stats. 111.

Ninth. The ninth circuit includes the districts of California, Oregon, Nevada, Idaho,⁴ Washington,⁵ and Montana.⁶ (19 U. S. Stats. 61; 21 U. S. Stats. 10; Rev. Stats. sec. 604.)

4 Added by 26 U. S. Stats. 217.

5 Added by 25 U. S. Stats. 682.

6 Added by 25 U. S. Stats. 682, sec. 21.

Territories assigned.—Ordered that under section 15 of the act approved March 3, 1891, entitled, "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," the territories of Alaska and Arizona are assigned to the ninth judicial circuit, and the territories of New Mexico, Oklahoma and Utah are assigned to the eighth judicial circuit. (139 U. S., Appendix.)

Wyoming district includes the Yellowstone Park. (28 U. S. Stats. 73.)

Note.—Utah has been admitted as a State and assigned to eighth circuit, (28 U. S. Stats. 111.)

CHAPTER VI. •

CIRCUIT COURTS—ORGANIZATION.

- § 63. Justices allotted to circuits, how designated.
- § 64. Allotment of the justices to the circuits.
- § 65. Circuit judges.
- § 65a. Additional circuit judge for each circuit.
- § 66. Additional circuit judges for certain circuits.
- § 67. Circuit courts, where established.
- § 68. Circuit courts, by whom to be held.
- § 69. Judges may be directed to sit together.
- § 70. Justices of Supreme Court to attend once in every two years.
- § 71. Judges of circuit courts may sit apart.
- § 72. Circuit courts held at the same time in different districts.
- § 73. Criminal terms in the southern district of New York, how held.
- § 74. When district judges may sit in cases of appeal or error to their own decisions.
- § 75. When suits transferred from one circuit to another.
- § 76. Causes certified back.
- § 77. Justices may hold courts of other circuits on request.
- § 78. When no justice is allotted to a circuit.
- § 79. Clerks.
- § 80. Deputy clerks.
- § 81. Compensation of deputy clerks.
- § 82. Circuit court commissioners abolished.

§ 63 (605). Justices allotted to circuits, how designated.—The words “circuit justice” and “justice of a circuit,” when used in this title, shall be

understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice. (Rev. Stats. sec. 605.)

§ 64 (606). **Allotment of the justices to the circuits.**—The chief justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a chief justice, or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the chief justice, and shall be binding until the next term and until a new allotment by the court. (Rev. Stats. sec. 606.)

Note.—No commission is necessary to authorize the justice of the Supreme Court to sit as circuit justice. (*Stuart v. Laird*, 1 Cranch, 299.) The justices of the Supreme Court are members of the circuit courts of the United States, and while traveling to attend such courts are in the discharge of a duty imposed by law. (*In re Neagle*, 135 U. S. 1.) They have the right to protection, while in discharge of their official duties, if threatened with personal violence or death. (*In re Neagle*, 135 U. S. 1.) A circuit justice may make an order allowing bail under paragraph 2, rule 36, Supreme Court, in a case in another circuit than the one to which he was allotted by the Supreme Court. (*Hudson v. Parker*, 156 U. S. 277.)

§ 65 (607). **Circuit judges.**—For each circuit there shall be appointed a circuit judge, who shall have the same power and jurisdiction therein as the justice of the Supreme Court, allotted to the circuit, and shall be entitled to receive a salary at the rate of six thousand dollars a year, payable quarterly on the first days of January, April, July, and October. Every circuit judge shall reside within his circuit. (Rev. Stats. sec. 607.)

§ 65 a. **Additional circuit judge for each circuit.**—There shall be appointed by the President of the United States, by and with the advice and consent of the Senate, in each circuit an additional circuit judge, who shall have the same qualifications and shall have the same power and jurisdiction therein that the circuit judges of the United States within their respective circuits now have under existing laws, and who shall be entitled to the same compensation as the circuit judges of the United States in their respective circuits now have. (Approved March 3, 1891; 26 U. S. Stats. 826.)

Note.—In each of the second, third, fifth, sixth, seventh, eighth, and ninth circuits there will hereafter be three circuit judges. In each of the first and fourth circuits there are but two circuit judges. (See §§ 65, 65 a, 66, and Acts of Jan. 25, and Feb. 23, 1899.)

§ 66. **Additional circuit judges for certain circuits.**—*Second circuit.*—That there shall be appointed for the second circuit, by the President of the United States, by and with the advice and consent of the Senate, in addition to the present circuit judge, another circuit judge, who shall have

the same qualifications and shall have the same power and jurisdiction therein that the present circuit judge has under existing laws, and who shall be entitled to the same compensation as the present circuit judge; *provided*, that the applications and proceedings therein provided for by sections two thousand and eleven, two thousand and twelve, two thousand and thirteen, and two thousand and fourteen of the Revised Statutes shall be made and taken before the senior circuit judge of the second circuit; but in his absence or inability to act under said sections, or any of them, such applications and proceedings may be made and had before the junior circuit judge in said circuit. (Approved March 3, 1887; 24 U. S. Stats. 492.)

Third, fifth and sixth circuits.—In each an additional circuit judge to be appointed. (30 U. S. Stats.)

Seventh circuit.—That there shall be in the seventh judicial circuit an additional circuit judge, who shall be appointed by the President by and with the advice and consent of the Senate, and shall possess the same qualifications and have the same power and jurisdiction now prescribed by law in respect to the present circuit judges therein. (Approved Feb. 8, 1895; 28 U. S. Stats. 643.)

Eighth circuit.—That there shall be in the eighth judicial circuit an additional circuit judge, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall possess the same qualifications and shall have

the same powers and jurisdiction now prescribed by law in respect to the present circuit judges. (Approved July 23, 1894; 28 U. S. Stats. 115.)

Ninth circuit.—That there shall be in the ninth judicial circuit an additional circuit judge, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall possess the same qualifications and have the same power and jurisdiction now prescribed by law in respect to the present circuit judges therein. (Approved Feb. 18, 1895; 28 U. S. Stats. 665.)

§ 67 (608). Circuit courts, where established.—Circuit courts are established as follows: One for the three districts of Alabama, one for the eastern district of Arkansas, one for the southern district of Mississippi, and one for each district in the States not herein named; and shall be called the circuit courts for the districts for which they are established. (Rev. Stats. sec. 608.)

ALABAMA.—There shall be, and is hereby, established a circuit court of the United States for the middle district of Alabama, as said district is now constituted by law, to be held in the city of Montgomery, and a like court for the northern district of Alabama, as said district is now constituted by law, to be held in the city of Huntsville. (18 U. S. Stats. 195.) The circuit court of the United States held at Mobile, Alabama, shall be designated and known as the circuit court of the United States for the southern district of Alabama. (18 U. S. Stats. 195.)

ARKANSAS—*Western district*.—There shall be, and is hereby, established a circuit court of the United States in and for the western district of Arkansas. (25 U. S. Stats. 655.)

MISSISSIPPI—*Northern district*.—There shall be, and is hereby, established a circuit court of the United States in and for the northern district of Mississippi. (25 U. S. Stats. 655.)

SOUTH CAROLINA — *Western district*. — There shall be, and is hereby, established a circuit court of the United States in and for the western district of South Carolina. (25 U. S. Stats. 655.)

§ 68 (609). **Circuit courts, by whom to be held.**—Circuit courts shall be held by the circuit justice, or by the circuit judge of the circuit, or by the district judge of the district sitting alone, or by any two of the said judges sitting together. (Rev. Stats. sec. 609.)

By whom circuit court held.—The district judge alone may hold the circuit court (Ex parte Kaine, 10 N. Y. Leg. Obs. 257; Fed. Cas. No. 7598); and although the allotted circuit justice be dead, and other allotment not yet made (Pollard v. Dwight, 4 Cranch, 421), and his authority is coextensive with that of any other judge of the same court (Robinson v. Satterlee, 3 Sawy. 134; Fed. Cas. No. 11967; In re Circuit Court, 1 Dill. 1; Fed. Cas. No. 2728); yet he will not set aside a preliminary injunction granted by the circuit justice, except in particular cases. (Hussey v. Whitely, 2 Fish. Pat. Cas. 120; Fed. Cas. No. 6950.) When a district judge in one district is sent to hold court in another district he is pro hac vice district judge of such district. (Ex parte Nicolas, 8 Blatchf. 102; Fed. Cas. No. 10256.)

§ 69. Judges may be directed to sit together.—That the circuit judge of the eighth judicial circuit may, by order, direct the judges of the said northern and southern districts of Iowa to sit together in holding the circuit court in either of said districts; and when so sitting the judge oldest in commission shall preside, and in case of disagreement between them his opinion shall prevail for the time being; *provided, however*, that a certificate of division may be signed by them with like effect as in cases provided by law for certificates of division between a circuit and district judge. (22 U. S. Stats. 172.)

§ 70 (610). Justices of Supreme Court to attend once in every two years.—It shall be the duty of the chief justice, and of each justice of the Supreme Court, to attend at least one term of the circuit court in each district of the circuit to which he is allotted during every period of two years. (Rev. Stats. sec. 610.)

Note.—Although this section does not require the justice to go to his circuit more than once in two years, yet the number of districts in the circuit may render it necessary for him to go to the circuit every year in performing his duties. (In *re* Neagle, 135 U. S. 1.)

§ 71 (611). Judges of circuit courts may sit apart.—Cases may be heard and tried by each of the judges holding a circuit court sitting apart by direction of the presiding justice or judge, who shall designate the business to be done by each. (Rev. Stats. sec. 611.)

§ 72 (612). Circuit courts held at same time in different districts.—Circuit courts may be held at the same time in the different districts of the same circuit. (Rev. Stats. sec. 612.)

§ 73 (613). Criminal terms in the southern district of New York—How held.—The terms of the circuit court for the southern district of New York, appointed exclusively for the trial and disposal of criminal business, may be held by the circuit judge of the second judicial circuit and the district judges for the southern and eastern districts of New York, or any one of said three judges; and at every such term held by said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district. (Rev. Stats. sec. 613.)

Note.—A circuit court may be held under this section by three judges for the trial and disposal of criminal cases. (Re Claasen, 140 U. S. 200.)

§ 74 (614). When district judges may sit in cases of appeal or error to their own decisions.—A district judge sitting in a circuit court shall not give a vote in any case of appeal or error from his own decision, but may assign the reasons for such decision; *provided*, that such a cause may, by consent of parties, be heard and disposed of by him when holding a circuit court sitting alone. When he holds a circuit court with either of the other judges, the judgment or decree in such cases shall

be rendered in conformity with the opinion of the presiding justice or judge. (Rev. Stats. sec. 614.)

Note.—Although the district judge may assign his reasons for his decision appealed from, he is prohibited from voting or taking part in the judgment of the circuit court. (U. S. v. Emholt, 4 Morr. Trans. 452.) He is absent in contemplation of law if he does not act in the cause, though he be present on the bench. (Bingham v. Cabbot, 3 Wall. 19.) A decree rendered by a district judge in a circuit court, in a case when he has no vote, is the decree of the court, good until vacated, and from such decree an appeal may be taken. (Baker v. Power, 124 U. S. 167.)

§ 75 (615). When suits transferred from one circuit to another.—When it appears in any civil suit in any circuit court that all of the judges thereof who are competent by law to try said case are in any way interested therein, or have been of counsel for either party, or are so related or connected with either party as to render it, in the opinion of the court, improper for them to sit in such trial, it shall be the duty of the court, on the application of either party, to cause the fact to be entered on the records, and to make an order that an authenticated copy thereof, with all the proceedings in the case, shall be forthwith certified to the most convenient circuit court in the next adjoining State or in the next adjoining circuit; and said court shall, upon the filing of such record and order with its clerk, take cognizance of and proceed to hear and determine the case, in the same manner as if it had been rightfully and originally commenced therein; and the proper process for the

due execution of the judgment or decree rendered in the cause shall run into and may be executed in the district where such judgment or decree was rendered, and also into the district from which the cause was removed. (Rev. Stats. sec. 615.)

Note.—This section is express and mandatory (*Supervisors v. Rogers*, 7 Wall. 179), and the statute should be construed so as to give the judge no more discretion than is necessary. (*Richardson v. Boston*, 1 Curt. 250; Fed. Cas. No. 11780.) The cause is to be transferred to the circuit court which is most convenient to parties and witnesses (*Richardson v. Boston*, 1 Curt. 250; Fed. Cas. No. 11780); and when the parties do not agree the cause will be removed of course to the nearest circuit court (*Richardson v. Boston*, 1 Curt. 250; Fed. Cas. No. 11780); and it is the cause which is removed, and not the court. (*Sawyer v. Oakman*, 11 Blatchf. 65; Fed. Cas. No. 12403.) The circuit court in which the judgment is rendered may issue mandamus to persons out of the State to compel its enforcement. (*Ex parte Holman*, 28 Iowa, 88.) Any component part of the proceeding, as a forthcoming bond, is transferred with the case. (*Stuart v. Laird*, 1 Cranch, 299.)

§ 76 (616). **Causes certified back.**—The circuit justice, or the circuit judge of any circuit, may order any civil cause, which is certified into any court of the circuit under the provisions of the preceding section, to be certified back to the court whence it came; and then the latter shall proceed therein as if the cause had not been certified from it; *provided*, that if, for any reason, it shall be improper for the judges of such court to try the cause so cer-

tified back, it shall be tried by some other judge holding such court, pursuant to the provisions of the next section. (See *Supervisors v. Rogers*, 7 Wall. 179; Rev. Stats. sec. 616.)

§ 77 (617). Justices may hold courts of other circuits on request.—Whenever a circuit justice deems it advisable, on account of his disability or absence, or of his having been of counsel, or being interested in any case pending in the circuit court for any district in his circuit, or of the accumulation of business therein, or for any other cause, that said court shall be held by the justice of any other circuit, he may, in writing, request the justice of any other circuit to hold the same, during a time to be named in the request; and such request shall be entered upon the journal of the circuit court so to be holden. Thereupon it shall be lawful for the justice so requested to hold such court, and to exercise within and for said district, during the time named in said request, all the powers of the justice of such circuit. (Rev. Stats. sec. 617.)

Note.—This section does not repeal the act of February 28, 1839, sec. 38 (5 Stats. 322, ante, sec. 615, providing for the transfer of suits to the circuit courts. (*Supervisors v. Rogers*, 7 Wall. 179.)

§ 78 (618). When no justice is allotted to a circuit.—Whenever, by reason of death or resignation, no justice is allotted to a circuit, the chief justice of the supreme court may make a request as provided in the preceding section, which shall have

effect in like manner until a justice is allotted to such circuit. (Rev. Stats. sec. 618.)

§ 79. Clerks.—Hereafter all appointments of clerks of circuit courts of the United States shall be made by the circuit judges of the respective circuits in which such circuit courts are or may be hereafter established; and all provisions of law inconsistent herewith are hereby repealed. (Approved February 6, 1889, 25 U. S. Stats. 655.)

Clerks.—Prior to 1889 the appointment of circuit court clerks was made by the circuit and district judges acting together. (Rev. Stats. § 619; 20 U. S. Stats. 204.) The clerk of a circuit court does not vacate his office by merely accepting the office of clerk of the circuit court of appeals. (*United States v. Harsha*, 16 U. S. App. 13; 56 Fed. Rep. 953.) He may then draw the salary for services in each position. (*Id.*)

ALABAMA.—That there shall be appointed for each of such circuit courts for said middle and northern districts [of Alabama] by the circuit judge of the circuit, a clerk, who shall take the oath and give the bond required by law of clerks of circuit courts, and who shall discharge all the duties and be entitled to all the fees and emoluments prescribed by law for clerks of circuit courts. (18 U. S. Stats. 195.)

ARKANSAS.—There shall be appointed in the northern division of the eastern district of Arkansas an additional clerk of the circuit court to reside at and keep his office at Batesville. (29 U. S. Stats. 592.) There shall be appointed in the east-

ern district of Arkansas one additional clerk of the circuit court, who shall reside and keep his office at Texarkana. (27 U. S. Stats. 13.) An additional clerk of the district court and an additional clerk of the circuit court for the western district of Arkansas shall be appointed to be clerks of said courts at Texarkana. (30 U. S. Stats. 682.)

CALIFORNIA.—The circuit judge of the southern district to appoint a clerk, to reside and keep his office at Los Angeles, who shall receive fees and compensation as now fixed by law. (24 U. S. Stats. 308.)

IDAHO.—A clerk shall be appointed whose office shall be kept at the capital of the State. (26 U. S. Stats. 217.)

ILLINOIS.—The clerk of the northern district shall be clerk of both divisions of said district. (24 U. S. Stats. 442.)

INDIANA.—Clerk to act at Hammond (30 U. S. Stats.)

IOWA.—The clerk of the district court shall be the clerk of the circuit court at all the places where the same is held in said district except at Des Moines. (21 U. S. Stats. 155.)

KENTUCKY.—In the district of Kentucky, a clerk of the circuit court shall be appointed at each place of holding the court, in the same manner and subject to the same duties and responsibilities which are or may be provided for clerks in independent districts. (Rev. Stats. sec. 620.)

NORTH CAROLINA.—In the western district of North Carolina the circuit and district judges shall appoint three clerks, each of whom shall be

clerks both of the circuit and district courts for said western district of North Carolina. One shall reside and keep his office at Statesville, one shall reside and keep his office at Asheville, and the third shall reside and keep his office at Greensborough. (Rev. Stats. sec. 621.)

UTAH.—There shall be appointed clerks of said courts who shall keep their offices at the capital of the State. (28 U. S. Stats. 110.)

VIRGINIA—*Western district of.*—In the western district of Virginia the circuit and district judges shall appoint four clerks, each of whom shall be clerks both of the circuit and district courts of said district. One of these clerks shall reside and keep his office at Lynchburgh, another shall reside and keep his office at Abingdon, another shall reside and keep his office at Danville, and the fourth shall reside and keep his office at Harrisonburgh, in said district. (Rev. Stats. sec. 622.)

WISCONSIN—*Western district of.*—In the western district of Wisconsin the circuit and district judges shall appoint two clerks, each of whom shall be clerks both of the circuit and district courts for said district. One shall reside and keep his office at Madison, and the other shall reside and keep his office at La Crosse. (Rev. Stats. sec. 623.)

· § 80 (624). Deputy clerks.—One or more deputies of any clerk of a circuit court may be appointed by such court, on the application of the

clerk, and may be removed at the pleasure of judges authorized to make the appointment. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office, and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults and misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond, shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (Rev. Stats. sec. 624.)

IDAHO.—That the clerk of the circuit and district courts for said district shall each appoint a deputy clerk at the place where their respective courts are required to be held in the division of the district in which such clerk shall not himself reside, each of whom shall, in the absence of the clerk, exercise all the powers, and perform all the duties of clerk within the division for which he shall be appointed; provided, that the appointment of such deputies shall be approved by the court for which they shall respectively be appointed and may be annulled by such court at its pleasure. (27 U. S. Stats. 73.)

KANSAS.—The clerk of the circuit court shall appoint, with the approval of the court, a deputy to reside and keep his office at Fort Scott, and who shall be removable at the pleasure of the court. (27 U. S. Stats. 24.)

INDIANA.—In the district of Indiana a deputy clerk of the circuit court must be appointed for said court held at New Albany, and a deputy clerk for said court held at Evansville, who shall reside and keep their offices at said places respectively. Each deputy shall keep in his office full records of all actions and proceedings in the circuit court held at the same place, and shall have the same power to issue all process from the said court that is or may be given to the clerks of other circuit courts in like cases. (See secs. 559, 560, and supplemental sections; Rev. Stats. sec. 625.) Clerk to act at Hammond. (30 U. S. Stats.)

MICHIGAN.—That the clerks of the circuit and district courts for the eastern district of Michigan shall each keep his office at the city of Detroit, and shall each appoint a deputy clerk for said courts held at Bay City, who shall reside and keep his office at that place, and such deputy clerk or clerks shall keep in his office dockets and full records of all actions and proceedings in said circuit and district courts for the northern division of said district held at that place, and shall have the same power to issue all processes from said courts, and perform any other duty that is or may be given to the clerks of other circuit and district courts in like cases. (28 U. S. Stats. 67.)

NORTH DAKOTA.—The clerk of the circuit court shall reside and have his principal office at Sioux Falls, and may appoint a deputy to reside and have an office at Pierre and Deadwood. (26 U. S. Stats. 15.) The clerk of the circuit court shall appoint a deputy clerk at the place where the

court is required to be held in the division of the district in which such clerk shall not himself reside, the appointment to be subject to judicial approval. (26 U. S. Stats. 68.)

SOUTH CAROLINA.—The office of the clerk of said court shall be kept in the cities of Charleston and of Greenville, and the clerk shall reside in one of the said cities and shall have a deputy in the other. (26 U. S. Stats. 71.)

SOUTH DAKOTA.—The clerk of the circuit court shall reside at Sioux Falls, and he may appoint a deputy to reside and have an office at Pierre and Deadwood. (26 U. S. Stats. 15.)

TEXAS.—The clerks of the circuit and district courts for said district shall maintain an office in charge of themselves or a deputy at the city of Beaumont, which shall be kept open at all times for the transaction of the business of said division. (29 U. S. Stats. 516.) There shall be appointed in the manner required by law a deputy clerk, who shall keep his office at the city of Fort Worth, and also one who shall keep his office at the city of Abilene, and also one who shall keep his office at the city of San Angelo. (29 U. S. Stats. 457.)

UTAH.—The clerks of the circuit and district courts for said district shall each appoint a deputy clerk at each of the places where their respective courts are required to be held in the divisions of the district, except in the division in which such clerk shall himself reside, each of which deputies shall, in the absence of the clerk, exercise all the powers and perform all the duties of the clerk

within the division for which he shall be appointed; *provided*, that the appointment of such deputies shall be approved by the court, for which they shall have been respectively appointed, and may be annulled by such court at its pleasure. (29 U. S. Stats. 620.)

§ 81 (626). Compensation of deputy clerks.—The compensations of deputies of clerks of the circuit courts shall be paid by the clerks, respectively, and allowed in the same manner that other expenses of the clerks' offices are paid and allowed. (Rev. Stats. sec. 626.)

§ 82. Circuit court commissioners abolished.—By an act approved May 28, 1896 (29 U. S. Stats. 184) the office of circuit court commissioner was abolished, and it was declared that "the terms of office of all commissioners of the circuit court heretofore appointed shall expire on the thirtieth day of June, 1897." The office of district court commissioner was created in place of that abolished, and the district court commissioner was intrusted with the duty of performing the unfinished labor of the circuit court commissioners. (29 U. St. Stats. 184.)

CHAPTER VII.

CIRCUIT COURTS—JURISDICTION.

- § 84. Jurisdiction, original and concurrent.
- § 85. Citizens claiming lands under different State grants—Foreign citizens, etc.
- § 85a. Jurisdiction in bankruptcy cases.
- § 86. Exclusive cognizance of crimes.
- § 86a. Injunctions to restrain infringements of copy-rights.
- § 86b. Suits to determine rights to Indian allotments.
- § 86c. Suits to partition land where United States is party.
- § 87. Suits, in what district brought.
- § 87a. Where patent infringement suits to be brought.
- § 88. Suits by assignees.
- § 89. Citizenship of national banking associations.
- § 90. Not to accept certain cases.
- § 91. No appellate jurisdiction.
- § 92. Concurrent with court of claims.
- § 93. Jurisdiction of cases transferred on account of disability, etc.
- § 94. Courts always open for certain purposes.
- § 95. Trusts and combinations in restraint of import trade.

§ 84. Circuit court—Jurisdiction, original and concurrent.—The circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where

the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid. (Act of March, 1875, Rev. Stats. sec. 629; clause 1, as amended March 3, 1887, and corrected August 13, 1888, 25 U. S. Stats. 433.)

Power of the judiciary.—Judicial power means the power with which courts are clothed, the power to render a judgment or decree. (*U. S. v. Arredondo*, 6 Peters, 691; *Rhode Island v. Massachusetts*, 12 Peters, 657.) It is the power to enter upon the inquiry. (*Board of Commrs. v. Platt*, 79 Fed. Rep. 567; *New Dunderberg M. Co. v. Old*, 79 Fed. Rep. 598.) The judicial power is unavoidably, in some cases, exclusive of all State authority, and in others may be made so by legislation. (*Martin v. Hunter*, 1 Wheat. 304; *The Moses Taylor*, 4 Wall. 411. The jurisdiction of the Federal courts depends exclusively on the Constitution and statutes passed in pursuance thereof. (*Mossman v. Higginson*, 4 Dall. 12; *Hodgson v. Bowerbank*, 5 Cranch, 303; *Bank v. Deveaux*, 5 Cranch, 61; *Amer. Ins. Co. v. Carter*, 1 Peters, 511; *Livingston v. Jefferson*, 1 Brock. 203; Fed. Cas. No. 8411; *U. S. v. Drennen*, Hemp. 320; Fed. Cas. No. 14992; *U. S. v. Alberty*, Hemp. 444; Fed. Cas. No. 14426.) The Constitution defines the limits, and Congress prescribes how much of it is to be exercised. (*Turner v. Bank*, 4 Dall. 8; *McIntire v. Wood*, 7

Cranch, 504; Kendall v. U. S., 12 Peters, 616; Cary v. Curtis, 3 How. 245; Clarke v. Jonesville, 4 Am. Law Reg. 593; Fed. Cas. No. 2854.) In the first three classes of cases named in this section—first, cases arising under the Constitution and laws of the United States, or treaties made under its authority; second, all cases affecting ambassadors, foreign ministers, and consuls; and third, all cases of admiralty and maritime jurisdiction—the jurisdiction is exclusive (State v. McBride, Rice, 400); and in the latter class as to controversies, Congress may qualify the jurisdiction as either original or appellate. (Martin v. Hunter, 1 Wheat. 304; The Moses Taylor, 4 Wall. 411.) The Federal courts are of limited jurisdiction, but inferior in the sense of the Constitution only in that judgments may be reviewed on appeal. (Turner v. Bank, 4 Dall. 9; U. S. v. Ta-wan-ga-ca, Hemp. 304; Fed. Cas. No. 16435; U. S. v. Hudson, 7 Cranch, 32; Matt. of Meador, 1 Abb. U. S. 324; Fed. Cas. No. 9375; Griswold v. Sedgwick, 1 Wend. 126; Byero v. Fowler, 12 Ark. 218; Erwin v. Lowry, 7 How. 172; Nugent v. State, 18 Ala. 52. They can exercise only the jurisdiction conferred on them by Congress (Ex parte Cabrera, 1 Wash. C. C. 232; Fed. Cas. No. 2278); or by treaty. (The British Prisoner, 1 Wood. & M. 66; Fed. Cas. No. 12734; U. S. v. New Bedford Bridge, 1 Wood. & M. 401; Fed. Cas. No. 15867; Smith v. Jackson, 1 Paine, 453; Fed. Cas. No. 13064.)

Circuit court.—The jurisdiction of the circuit court depends exclusively on the Constitution and laws of the United States. (Cary v. Curtis, 3 How. 236; Sheldon v. Sill, 8 How. 441; Scott v. Sandford, 19 How. 393; Hubbard v. Northern R. R. Co., 3 Blatchf. 84; Fed. Cas. No. 6818; Bennett v. Bennett, Deady, 300; Fed. Cas. No. 1318; Karrahoo v. Adams, 1 Dill. 344; Fed. Cas. No. 7614; Wisconsin v. Duluth, 2 Dill.

406; Fed. Cas. No. 17902; *Harrison v. Hadley*, 2 Dill. 229; Fed. Cas. No. 15390; *Smith v. Allyn*, 1 Paine, 486; Fed. Cas. No. 13065; *Livingston v. Van Ingen*, 1 Paine, 45; Fed. Cas. No. 8420; *U. S. v. Terrel*, Hemp. 411; Fed. Cas. No. 16452; *U. S. v. Alberty*, Hemp. 444; Fed. Cas. No. 14426; *White v. Fenner*, 1 Mason, 520; Fed. Cas. No. 17547; *Ex parte Cabrera*, 1 Wash. C. C. 232; Fed. Cas. No. 2278; *Livingston v. Jefferson*, 1 Brock, 203; Fed. Cas. No. 84117; *Holmes v. Goldsmith*, 147 U. S. 150; *Nashville C. & St. L. Ry. Co. v. Taylor*, 86 Fed. Rep. 168; *Roy v. Tatum*, 30 U. S. App. 63; 72 Fed. Rep. 112.) The jurisdiction of the circuit court is limited, depending either upon the existence of a Federal question or diverse citizenship of the parties, and where it does not obtain, it is an inflexible rule that it cannot be exercised, even if both parties desire to have it exerted. (*Railroad Co. v. Swan*, 111 U. S. 379; *Vanerson v. Leverett* (Cir. Ct. Ga.), 31 Fed. Rep. 376; *Byers v. McAuley*, 149 U. S. 608; *State of Indiana v. Tolleston Club*, 53 Fed. Rep. 18; *Olds Wagon Works v. Benedict*, 32 U. S. App. 116; 67 Fed. Rep. 1.) The presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears. (*Grace v. Am. Cent. Ins. Co.*, 109 U. S. 278; *Peper v. Fordyce*, 119 U. S. 469; *Turner v. Bank*, 4 Dall. 8; *Livingston v. Van Ingen*, 1 Paine, 45; Fed. Cas. No. 8420; *Nashville C. & St. L. Ry. Co. v. Taylor*, 86 Fed. Rep. 168.) Yet if the jurisdiction does not affirmatively appear the judgment of final decree cannot be attacked collaterally for that reason. (*Dowell v. Applegate*, 152 U. S. 327; *Evers v. Watson*, 156 U. S. 527.) It is not irrespective of citizenship unless the subject-matter arises under the Constitution, laws, or treaties of the United States. (*Dowell v. Griswold*, 5 Sawy. 39; Fed. Cas. No. 4041.) When the requisite citizenship of the parties appears, and the subject-matter is

within the court's jurisdiction, the jurisdiction of the court attaches. If any error is committed in the exercise of the jurisdiction, it can only be remedied by an appeal. (*Smith v. McKay*, 161 U. S. 355.) A proceeding by way of attachment to enforce a judgment is a suit, and jurisdiction attaches if the creditor and garnishee are not citizens of the same State (*Tunstall v. Worthington*, Hemp. 662; Fed. Cas. No. 14239); but attachment cannot be sued out in an action where court has no jurisdiction of persons. (*Ex parte Ry. Co.*, 103 U. S. 795.) The circuit court may by habeas corpus bring up the body of a person imprisoned by a judgment of a court-martial. (*Barrett v. Hopkins*, 2 McCrary, 129; 7 Fed. Rep. 312.) An application for mandamus cannot be made to the circuit court as an exercise of original jurisdiction, although the parties are citizens of different States. (*McIntire v. Woods*, 7 Cranch, 504; *McClung v. Silliman*, 6 Wheat. 598; *Bath Co. v. Amy*, 13 Wall. 244; *Graham v. Norton*, 15 Wall. 427; *Wheeling v. Mayor*, 1 Hughes, 90; Fed. Cas. No. 17502; U. S. v. *Smallwood*, 1 Chic. L. N. 321; Fed. Cas. No. 16315; *Gares v. Northwest Nat. Bank*, 55 Fed. Rep. 209; *Provisional Municipality of Pensacola v. Lehman*, 13 U. S. App. 411; 57 Fed. Rep. 324; *State of Indiana v. Lake Erie & W. Ry. Co.*, 85 Fed. Rep. 1.) In a suit to cancel a purely personal contract (not lien) circuit court cannot acquire jurisdiction of a defendant unless he appear or there be personal service of process on him in the district. (*Insurance Co. v. Bangs*, 103 U. S. 435.) The circuit court has jurisdiction of an action in the name of a nominal plaintiff for the use of an alien (*Browne v. Strode*, 5 Cranch, 303); or the payee of a note for the use of a holder (*Irvine v. Lowry*, 14 Peters Adm. 293); or on a bond in the name of the marshal to the use of a citizen of another State (*Huff v. Hutchinson*, 14

How. 586); or on an official bond taken in the name of the governor to the use of a citizen injured by the officer's violation of duty. (*McNutt v. Bland*, 2 How. 1.) The circuit court cannot reverse or set aside a decree of a State court which had complete jurisdiction over the parties and subject-matter. (*Nougué v. Clapp*, 101 U. S. 551; *Elder v. Richmond G. & S. M. Co.*, 19 U. S. App. 118; 58 Fed. Rep. 536; *Philbrook v. Newman*, 85 Fed. Rep. 139; *Forsyth v. Hammond*, 166 U. S. 506.) Neither has it jurisdiction to correct a supposed mistake in the proceedings of a State court. (*Nantahala Marble & T. Co. v. Thomas*, 76 Fed. Rep. 59.) It may take jurisdiction of causes affecting the property of a State in the hands of its agents, if within its jurisdiction, without requiring the State to be a party (*Swasey v. N. C. Railroad Co.*, 1 Hughes, 17; Fed. Cas. No. 13679); but has no jurisdiction to enjoin the enforcement of a State judgment against a bankrupt. (In *re Lodi etc. Co.*, 5 Sawy. 286; Fed. Cas. No. 8461.) A declaration of insolvency will not prevent the judgment creditor of an administrator from filing a bill to obtain payment out of the assets which remain. (*Union Bank v. Jolly*, 18 How. 503.) So a distributee may file a bill to obtain his share of the estate (*Payne v. Hook*, 7 Wall. 425; *Chapman v. Borer*, 1 Fed. Rep. 274); and a creditor may maintain an action to have the amount of the debt judicially ascertained (*Kittredge v. Race*, 92 U. S. 116); but he cannot institute an action against an administrator for a devastavit until compliance with State laws as to such action. (*McGill v. Armour*, 11 How. 142.) A Federal court cannot assume jurisdiction when the insolvent company is in the hands of a receiver of a State court. (*Hamilton v. Choteau*, 2 McCrary, 500; 6 Fed. Rep. 339.) A plaintiff may on motion obtain judgment against the marshal for money collected

and not paid over (*Gwin v. Breedlove*, 2 How. 29); or he may file a bill to enjoin the marshal from the sale of his property. (*Gibbs v. Usher*, 1 Holmes, 348; *Fed. Cas. No. 5387*.) A bill seeking an injunction to restrain proceedings at law may be entertained without regard to citizenship of the parties (*St. Luke's Hospital v. Barclay*, 3 Blatchf. 259; *Fed. Cas. No. 12241*); or the court may dispense with unnecessary parties. (*Simms v. Guthrie*, 9 Cranch, 19.) Courts of equity in the absence of remedy provided by statute may enforce a public trust by railroads, and give redress by injunction. (*McCoy v. C. I. St. L. & C. R. Co.*, 13 *Fed. Rep.* 3.) The purchaser at a judicial sale may demand a good title, and equity will relieve him from his bid if such cannot be given. (*Dunscombe v. Holst*, 13 *Fed. Rep.* 11.) Third parties may apply to the circuit court for relief irrespective of citizenship. (*Conwell v. White W. V. C. Co.*, 4 *Biss.* 195; *Fed. Cas. No. 3148*; *Barth v. Makeever*, 4 *Biss.* 206; *Fed. Cas. No. 1069*.) So if the marshal seize the property of a third party (*Gibbs v. Usher*, 1 Holmes, 348; *Fed. Cas. No. 5387*); or a party whose notes are sought to be reached by attachment (*Jones v. Andrews*, 10 Wall. 327); but a party who claims the right to be paid out of the proceeds of the notes cannot file a bill against a citizen of the same State. (*Christmas v. Russell*, 14 Wall. 69.) A bill may be filed to vacate a *décree* for fraud, even though the parties are citizens of the same State. (*Osborn v. Michigan Air Line R. Co.*, *Fed. Cas. No. 10594*; *O'Brien Co. v. Brown*, 1 *Dill.* 588; *Fed. Cas. No. 10399*; *Dann v. Clarke*, 8 *Peters*, 1.) So of a bill to restrain or regulate an injunction (*Freeman v. Howe*, 24 How. 450); or if a party seeks to obtain an unjust advantage by perversion or abuse of orders. (*Minnesota Co. v. St. Paul Co.*, 2 Wall. 609.) The circuit court, if it has jurisdiction, may

settle the rights of the parties (*U. S. v. Meyers*, 2 Brock. 516; *Fed. Cas. No. 15844*); and having once rightfully acquired jurisdiction may retain it till complete relief is afforded within the general scope of the subject-matter of suit. (*Ward v. Todd*, 103 U. S. 327.)

A Federal court will not enjoin the collection of a tax which is only a charge upon the person taxed or his personal property. (*Linehan Ry. Transfer Co. v. Pendergrass*, 36 U. S. App. 48; 70 *Fed. Rep.* 1.) The courts can only grant or refuse compulsory obedience to the order of the interstate commerce commission and have no authority to modify or change it. (*Detroit G. H. & M. Ry. Co. v. Interstate Commerce Comm.*, 43 U. S. App. 308; 74 *Fed. Rep.* 803; *Interstate Commerce Comm. v. Louisville & N. R. Co.*, 73 *Fed. Rep.* 409.) The court will exercise its jurisdiction in enforcing obedience to orders of the interstate commerce commission when such jurisdiction clearly appears. (*Interstate Commerce Com. v. Western N. Y. & P. R. Co.*, 82 *Fed. Rep.* 192; *Interstate Commerce Comm. v. Southern Pac. Ry. Co.*, 74 *Fed. Rep.* 42.) The supervisory jurisdiction conferred upon the circuit courts over causes and questions arising in the district courts in bankruptcy cases was not transferred to the circuit courts of appeal by the Act of March 3, 1891. (*In re Starr*, 56 *Fed. Rep.* 142; *In re Briggs*, 20 U. S. App. 579; 61 *Fed. Rep.* 498.) Leave from the Supreme Court is not necessary to authorize a circuit court to restrain the enforcement of its own judgment against a merely nominal party, though such judgment was rendered upon a mandate of the Supreme Court. (*Brown v. Walker*, 84 *Fed. Rep.* 532); but where a case has been settled by the Supreme Court on the merits, the circuit court has no authority, without express leave, to grant a new trial, a rehearing or re-

view. (*Chicago B. & Q. Ry. Co. v. City of Chicago*, 166 U. S. 258.) The circuit court will in a collateral proceeding take judicial notice of the affirmance of its judgment when the fact that such judgment of affirmance has been rendered is one of general notoriety in the State. (*In re Durrant*, 84 Fed. Rep. 314.) While the Federal courts will in a limited class of instances compel the agents of a State to set in motion machinery existing under State authority for the collection of taxes these courts will neither create the machinery nor invest any person with power to use the same. (*O'Brien v. Wheelock*, 78 Fed. Rep. 673.) A creditor's bill may be maintained in a Federal court upon a judgment procured in a different State from that in which the court sits. (*Merchants' Nat. Bank v. Chattanooga Const. Co.*, 53 Fed. Rep. 314.) The circuit court has power to order several actions by one plaintiff against different defendants to be consolidated for trial when they are of like nature and relative to the same question. (*Mutual Life Ins. Co. v. Hillmon*, 145 U. S. 285.) The circuit court should not be deprived of jurisdiction at the suggestion of the party who voluntarily invoked it. (*Fisher v. Shropshire*, 147 U. S. 133.) The United States circuit court has no jurisdiction of an action against a collector to recover duties illegally assessed and paid on imported goods (*Schoenfeld v. Hendricks*, 152 U. S. 691); but has jurisdiction to review the decision of the board of general appraisers reversing or affirming the decision of the collector. (*U. S. v. Klingenberg*, 153 U. S. 93; *United States v. Jahn*, 155 U. S. 109.) A decree upon a controversy in an intervening petition separable from the main suit may be separably reviewed, but the jurisdiction over such controversy is to be ascribed to the same grounds as jurisdiction in the main suit. (*Rouse v. Letcher*, 156 U. S. 47.) Under the Act of

July 2, 1890, the circuit court has power to issue an injunction to restrain illegal combinations in restraint of commerce among the States (*United States v. Agler*, 62 Fed. Rep. 824), and the act is constitutional. (*United States v. Elliott*, 64 Fed. Rep. 27.) Circuit courts have jurisdiction to issue the writ of habeas corpus in a case where a person is unlawfully restrained of his liberty by State officers under an unconstitutional statute (*Baker v. Grice*, 169 U. S. 284; *In re Race Horse*, 70 Fed. Rep. 598), but have no jurisdiction to determine upon habeas corpus the custody of an insane person where the question of such custody is one of discretion as to the place and character of confinement, and not of the legality of any restraint. (*King v. McLean Asylum*, 21 U. S. App. 481; 64 Fed. Rep. 331.)

Primary and ancillary jurisdiction—Conflict of courts.—See *Compton v. Jesup*, 31 U. S. App. 486; 68 Fed. Rep. 263; *Jones v. Central Trust Co.*, 43 U. S. App. 224; 73 Fed. Rep. 568; *Fletcher v. Harney Peak Tin M. Co.*, 84 Fed. Rep. 555; *Central Trust Co. v. East Tennessee V. & G. R. Co.*, 69 Fed. Rep. 658; *Farmers' Loan & Trust Co. v. Northern Pac. Ry. Co.*, 69 Fed. Rep. 871.)

Following decisions of other Federal courts.—As a rule a circuit court will follow the decisions of the circuit court of another circuit (*Grand Trunk Ry. Co. v. Central Vermont Ry. Co.*, 84 Fed. Rep. 66; *Campbell Printing Press Co. v. Prieth*, 77 Fed. Rep. 976; *Tannage Plant Co. v. Donallan*, 75 Fed. Rep. 287; *Loewer Sole Rounder Co. v. Gibbon*, 74 Fed. Rep. 555; *Reed v. Atlantic & S. P. R. R. Co.*, 85 Fed. Rep. 692); and will follow the decisions of the circuit court of appeals of another circuit when the circuit court of appeals of its own circuit has not passed upon the question. (*Norton v. Wheaton*, 57

Fed. Rep. 927; *Fairfield Floral Co. v. Bradbury*, 87 Fed. Rep. 415; *Beach v. Hobbs*, 82 Fed. Rep. 916; *Edison Electric Light Co. v. Bloomingdale*, 65 Fed. Rep. 212.) But it should follow the decisions of the circuit court of appeals of its own circuit when that court has passed upon the question. (*Norton v. Wheaton*, 57 Fed. Rep. 927.)

Concurrent Jurisdiction.—In a transitory action, a right arising under or a liability imposed by either the common law or a State statute may be asserted and enforced in the Federal court. (*Dennick v. Railroad Co.*, 103 U. S. 11; see *Bridges v. Sheldon*, 18 Blatchf. 295, 507.) Where the State statute gives a right, the same may be asserted or enforced in the Federal courts whenever the citizenship of the parties or the nature of the subject will permit (*Holmes v. O. & C. R. Co.*, 6 Sawy. 262; *International Bank of St. Louis v. Faber*, 79 Fed. Rep. 919; *Lilienthal v. Drucklieb*, 80 Fed. Rep. 562; *Bigelow v. Nicker-son*, 34 U. S. App. 261; 70 Fed. Rep. 113); and rights given by State statute may be enforced in a Federal court in certain cases where they could not be enforced in the State court. (*Sullivan v. Beck*, 79 Fed. Rep. 200.) A Federal court cannot entertain jurisdiction of a bill of review seeking the rehearing of a cause in a State court. (*Graver v. Faurot*, 64 Fed. Rep. 241; *Elder v. Richmond, G. & S. M. Co.*, 19 U. S. App. 118; 58 Fed. Rep. 536.) The jurisdiction of a United States court is not affected by a subsequent action brought in the State court. (*Harris v. Hess*, 20 Blatchf. 253; *Blydenstein v. New York Security & T. Co.*, 59 Fed. Rep. 12; *Central Trust Co. v. South Atlantic & O. R. Co.*, 57 Fed. Rep. 3.) So where two suits are brought on different facts, seeking different relief, they may be brought, respectively, in the State and Federal court. (*Dwight v. Central Vt. R. Co.*, 20 Blatchf. 200.) The institution of a suit to

foreclose a contract relating to real estate, in a State court, will not deprive the Federal court of jurisdiction to foreclose liens against parts of the same real estate where the two suits involve a different controversy (*Hubbard v. Bellew*, 3 Fed. Rep. 477); or where the suit in the State court is in the form of an attachment and a bond is given in the Federal court to protect the attaching party. (*Southern Bank & T. Co. v. Folsom*, 43 U. S. App. 713; 75 Fed. Rep. 929.) If after filing a bill in the Federal court, but before service of process, a judgment is entered in the State court, the possession of the receiver appointed by the Federal court is subject to the lien of such judgment. (*Wheeler v. Walton & Whann*, 65 Fed. Rep. 720.) Where the subject-matter and the parties are before the court in a foreclosure on some of the installments, it has jurisdiction, even though suit is pending in another court on some former installment, and its acts cannot be collaterally attacked. (*Marchand v. Frellson*, 4 Morr. Trans. 431.) A mortgage foreclosure suit in the Federal court is unaffected by the fact that the mortgagor has made a statutory general assignment for benefit of creditors. (*Edwards v. Hill*, 19 U. S. App. 493; 59 Fed. Rep. 723.) The circuit court has concurrent jurisdiction with the probate court in actions against a county. (*Cunningham v. County of Ralls*, 1 McCrary, 117; *Paine v. Hook*, 7 Wall. 426.) In cases of a dual controversy between different parties, where the union is in no sense due to the plaintiff, the Federal court, it seems, has no jurisdiction. (*Iowa Homestead Co. v. Des Moines N. & R. Co.*, 3 McCrary, 95.) Where two suits, involving to a great extent the subject-matter, are brought, respectively, in a State and Federal court, that court whose process is first served obtains jurisdiction of all questions which legitimately flow out of the sub-

ject-matter of the case. (Union Mut. L. Ins. Co. v. University of Chicago, 10 Biss. 191.) Between courts of concurrent jurisdiction, the court first acquiring jurisdiction will retain it and will not be interfered with by another court. (Davis v. Life Association of America, 11 Fed. Rep. 781; Central Nat. Bank v. Stevens, 169 U. S. 432; United States v. King, 74 Fed. Rep. 493; Ward v. San Diego Land & T. Co., 79 Fed. Rep. 665; Lanning v. Osborne, 79 Fed. Rep. 657; Holt County v. National Life Ins. Co., 80 Fed. Rep. 686; Thorpe v. Sampson, 84 Fed. Rep. 63; Tarr v. Rosenstein, 5 U. S. App. 197; 53 Fed. Rep. 112.) Such court may retain the case until complete relief is afforded. (Ward v. Todd, 103 U. S. 327.) But the pendency of a suit in a State court is not necessarily a bar to a suit in a Federal court involving the same parties and the same issues. (Short v. Hepburn, 41 U. S. App. 520; 75 Fed. Rep. 113; Lake Nat. Bank v. Wolfeborough Sav. Bank, 23 U. S. App. 734; 78 Fed. Rep. 517; Shaw v. Lyman, 79 Fed. Rep. 2; Merrit v. American Steel Barge Co., 49 U. S. App. 85; 79 Fed. Rep. 228; Woodbury v. Allegheny & K. R. Co., 72 Fed. Rep. 371; Hughes v. Green, 56 U. S. App. 56; 84 Fed. Rep. 833; Porter v. Davidson, 62 Fed. Rep. 626; City of North Muskegon v. Clark, 22 U. S. App. 522; 62 Fed. Rep. 694; Wilcox & Gibbs G. Co., v. Phoenix Ins. Co., 61 Fed. Rep. 199; Rejall v. Greenwood, 60 Fed. Rep. 784; Marshall v. Otto, 59 Fed. Rep. 249; Chicago Trust & Sav. Bank v. Bentz, 59 Fed. Rep. 645; In re Langford, 57 Fed. Rep. 570.) So where under a State act proceedings for a dissolution and administration of the property of a corporation are commenced, they must be finally disposed of in the State tribunal, though a valid and subsisting judgment was obtained in the federal court. (Levi v. Columbia L. Ins. Co., 1 McCrary, 34.) State and federal courts cannot lawfully interfere

with each other where each is acting within legal limits. (*Walker v. Flint*, 3 McCrary, 507.) The circuit court has no authority to control the proceedings of a State court, or to stay the prosecution therein. (*Harrison Wire Co. v. Wheeler*, 11 Fed. Rep. 206; *Coffin v. Haggin*, 7 Sawy. 509; *Rhodes and Jacob's Mfg. Co. v. State of New Hampshire*, 70 Fed. Rep. 721.) A circuit court may enjoin a process in the State court after removal of a cause thereto. (*Dietzsch v. Hindlekoper*, 103 U. S. 494.) The federal and State courts are separate and independent tribunals. (*Little v. Alexander*, 1 Hughes, 177; Fed. Cas. No. 8393.) An action commenced in a State court and transferred to another State court is no bar to an action in the circuit court. (*Hyde v. Stone*, 20 How. 170.) So, a declaration of insolvency by a State court will not abate an action against an administrator unless the plaintiff was a voluntary party in the proceedings in the State court. (*Suydam v. Broadnax*, 14 Peters, 67; *Green v. Creighton*, 23 How. 90.) A suit may be instituted to set aside an assignment for benefit of creditors, although the trustee has given bond under the State laws (*Adler v. Ecker*, 2 Fed. Rep. 126); but the trustee appointed by the State court cannot be sued by a creditor in the circuit court. (*Peale v. Phipps*, 14 Howard, 368.) A mortgagee who holds a mortgage of a deceased debtor may proceed in the circuit court to foreclose it, though the estate of the debtor is in course of administration. (*Erwin v. Lowry*, 7 How. 172.) A citizen of one State may enjoin the collection of a tax by a citizen of another State, although the State law provides for proceedings in the State court. (*Oliver v. Omaha*, 3 Dill. 368; Fed. Cas. No. 10499.) The court which first acquires possession of the fund or subject of the action has exclusive jurisdiction. (*Burt v. Keyes*, 1 Flippen, 61; Fed. Cas. No. 2212.)

A federal court will neither interfere with property in the lawful custody of the State court nor tolerate interference by a State court with property in its custody (*Walker v. Flint*, 7 Fed. Rep. 435; *Louisville Trust Co. v. City of Cincinnati*, 47 U. S. App. 36; 76 Fed. Rep. 296; *Southern Bank & Trust Co. v. Folsom*, 43 U. S. App. 713; 75 Fed. Rep. 929; *Lant v. Manley*, 71 Fed. Rep. 7; *Summer v. White*, 36 U. S. App. 395; 71 Fed. Rep. 106; *In re Hall & Stilson Co.*, 73 Fed. Rep. 527); but if the State court should first acquire jurisdiction, the federal court should not dismiss its suit, but should stay its hand (*Gimmerman v. So Relle*, 80 Fed. Rep. 417. *Hughes v. Green*, 56 U. S. App. 56; 84 Fed. Rep. 833); nor can a State court reach funds which have been used by an officer of a federal court on execution (*Alabama Gold. L. Ins. Co. v. Girardy*, 9 Fed. Rep. 142); but that property is being administered on in a State court is no bar to the proceedings in the circuit court. (*Griswold v. Cent. Vt. R. Co.*, 20 Blatchf. 212.) The rule of comity toward State courts should not operate to deprive the federal court of its rightful jurisdiction (*Andrews v. Smith*, 5 Fed. Rep. 833); but conflict of jurisdiction and embarrassment are avoided by following the rule of comity (*Marks v. Marks*, 75 Fed. Rep. 321); but to take advantage of the rule in favor of a State court of concurrent jurisdiction, the point must be seasonably urged; after trial on the merits it is too late. (*Gilman v. Perkins*, 10 Biss. 430; 7 Fed. Rep. 887.) The rule of comity applies to criminal as well as to civil cases; so where the marshal took a prisoner charged with the same offense from the custody of the State officer, the federal court sustained the indictment, and remanded the prisoner to the State authorities. (*U. S. v. Wells*, Fed. Cas. No. 16664; 11 Am. Law Reg. 424; *Fox v. Ohio*, 5 How. 410; *Jett's Case*, 18 Gratt. 942; *U. S. v. Van Fossen*, 1 Dill. 411; Fed. Cas. No. 16607; see U. S.

v. French, 1 Gall. 1; Fed. Cas. No. 15665; Ex parte Forbes, 1 Dill. 363; Fed. Cas. No. 4921.) As where, under an act of Congress admitting a State or organizing a Territory, and providing for an Indian reserve (Langford v. Monteith, 102 U. S. 145); but the federal court has no jurisdiction over an indictment of a white man for the murder of a white man on such a reserve within the limits of a State. (U. S. v. McBralney, 3 Morr. Trans. 706.) With respect to land owned by the United States within the limits of a State, over which the State has not parted with its jurisdiction, the United States stands in the relation of a proprietor only, and State officers have the same right to enter thereon and seize personal property for nonpayment of taxes, if the right is exercised so as not to interfere with the operations of the general government. (State Tax Laws, 14 Op. Att.-Gen. 199.) The circuit courts have not exclusive jurisdiction of suits in personam growing out of collisions between vessels navigating the Ohio. (Schoonmaker v. Gilmore, 102 U. S. 118.) So they have only concurrent jurisdiction with the district courts in suits in equity by the assignee of a bankrupt in one State against the citizen of another State (Scoville v. Shaw, 4 Cliff. 549; Fed. Cas. No. 12552; Gindrat v. Dane, 4 Cliff. 260; Fed. Cas. No. 5455); and they have power to appoint a guardian for an infant only when property of the infant is involved in a legal proceeding before them, in order to preserve it from destruction or waste. (Insurance Co. v. Bangs, 2 Morr. Trans. 791.) A federal court will not appoint a receiver for a corporation when it appears that a State court has already appointed a receiver, who has taken possession of all its assets (Garner v. Southern Mutual Bldg. & Loan Assn., U. S. App. 84 Fed. Rep. 3; Ross v. Heckman, 84 Fed. Rep. 6; Shields v. Coleman, 157 U. S. 168); nor when the

State court has appointed an assignee in insolvency (*Val Blatz Brewing Co. v. Walsh*, 84 Fed. Rep. 5); and the federal court will not inquire into any irregularities in the appointment of the receiver by the State court. (*Remington Paper Co. v. Louisiana Printing & Pub. Co.*, 56 Fed. Rep. 287.) Where a suit has been filed in the State court on the same day that a suit was filed in the federal court, proof will be heard as to which suit was instituted first. (*Gamble v. City of San Diego*, 79 Fed. Rep. 487.) When two suits are pending, one in the State and one in the federal court, both upon the same cause of action, the practice is not to dismiss, but to suspend action in the second suit until the first is tried and determined. (*Hughes v. Green*, 56 U. S. App. 56; 84 Fed. 833; *Zimmerman v. So Relle*, 80 Fed. Rep. 417.) A State court may, so far as the federal laws are concerned, take cognizance of a suit brought by a State in its own courts against citizens of other States. (*Plaquemines Tropical Fruit Co. v. Henderson*, 170 U. S. 511.) Federal courts have jurisdiction on the official bonds of State and county officers. (*National Bank of Redemption v. Rutledge*, 84 Fed. Rep. 400.) The circuit courts have concurrent jurisdiction with the district courts of suits on the official bonds of government officers chargeable with public moneys. (*U. S. v. Belknap*, 73 Fed. Rep. 19.) A judgment of a State court in a suit upon the same issues between the same parties is binding upon the federal court. (*Nugent v. Phila. Traction Co.*, 87 Fed. Rep. 251; *Sipe v. Copwell*, 16 U. S. App. 704; 59 Fed. Rep. 970; *Fuller v. Hamilton Co.*, 53 Fed. Rep. 411.)

In proceedings concerning estates of deceased persons.—A Federal court has no original jurisdiction in respect to the administration of the estate of a deceased person. (*Byers v. McAuley*, 149 U. S.

608; *In re Foley*, 76 Fed. Rep. 390; *Copeland v. Bruning*, 72 Fed. Rep. 5.) Where the necessary diversity of citizenship exists, the circuit court has jurisdiction of a suit for the construction of a will, the execution, validity and probate of which are recognized (*Toms v. Owen*, 52 Fed. Rep. 417; *Woods v. Paine*, 66 Fed. Rep. 807), and has jurisdiction as between citizens of different States of the administration of the assets of deceased persons, such assets being within the territorial jurisdiction of the court. (*Comstock v. Herron*, 6 U. S. App. 626; 55 Fed. Rep. 803; *Lawrence v. Nelson*, 143 U. S. 215; *Hayes v. Pratt*, 147 U. S. 557; *Continental Nat. Bank v. Heilman*, 81 Fed. Rep. 36.) A bill by a legatee against an executor to recover a legacy is within the equitable jurisdiction of the Federal court. (*Domestic & Foreign Miss. Soc. v. Gaither*, 62 Fed. Rep. 422; *Byers v. McAuley*, 149 U. S. 608; *Brendel v. Church*, 82 Fed. Rep. 262.) Federal courts have no jurisdiction of a direct action to cancel a will. (*Oakley v. Taylor*, 64 Fed. Rep. 245; but see. contra, *Richardson v. Green*, 15 U. S. App. 488; 61 Fed. Rep. 423.) A Federal court has no jurisdiction to disestablish a will admitted to probate and establish one not admitted, where the State courts of equity have no such powers. (*Cilley v. Patten*, 62 Fed. Rep. 498.) The Federal court has jurisdiction to adjudge whether a liability exists, but cannot issue execution against property in the control of the State probate court. (*Wickham v. Hull*, 60 Fed. Rep. 326; *Heaton v. Thatcher*, 59 Fed. Rep. 731.) An assessment against the estate of the owner of national bank stock in the hands of his executrix is enforceable in the Federal courts, though proceedings for the settlement of the estate are pending in the State probate court. (*Brown v. Ellis*, 86 Fed. Rep. 357; *Zimmerman v. Carpenter*, 84 Fed. Rep. 747.)

Cases at law or in equity.—A case consists in the right of a party, and arises when a correct decision depends upon the constitution or laws. (U. S. v. Williams, 4 Cranch C. C. 372; Fed. Cas. No. 16712; Cohens v. Virginia, 6 Wheat. 379; Osborn v. Bank, 9 Wheat. 738; Mills v. Brown, 16 Peters, 525; Lawlor v. Walker, 14 How. 149; Railroad Co. v. Rock, 4 Wall. 180; Ex parte Milligan, 4 Wall. 114; Fountain v. Ravenel, 17 How. 369; Loring v. Marsh, 2 Cliff. 469; Fed. Cas. No. 8515; Baker v. Biddle, Bald. 394; Pierpont v. Fowle, 2 Wood & M. 23; Fed. Cas. No. 11152; Jones v. Seward, 41 Barb. 272.) Cases at law are such as require legal rights to be determined. (Robinson v. Campbell, 3 Wheat. 212; Parsons v. Bedford, 3 Peters, 433; Fenn v. Holme, 21 How. 486; Sheirburn v. De Cordova, 24 How. 423; Kohl v. U. S., 91 U. S. 367.) Suits in which relief is sought according to the principles and practice in equity cases are “cases in equity.” (Robinson v. Campbell, 3 Wheat. 212; U. S. v. Howland, 4 Wheat. 108; Lorman v. Clarke, 2 McLean, 568; Fed. Cas. No. 8516; Gordon v. Hobart, 2 Sum. 401; Fed. Cas. No. 5609; Pratt v. Northern, 5 Mason, 95; Fed. Cas. No. 11376; Cropper v. Coburn, 2 Curt. 465; Fed. Cas. No. 3416.) The jurisdiction in equity as to remedies (Meade v. Beale, Taney, 339; Fed. Cas. No. 9371) is coextensive with the jurisdiction in chancery as exercised in England, and is not affected by State jurisprudence as to practice and procedure (Wheeling Bridge case, 13 How. 521; Dodge v. Woolsey, 18 How. 331; Barber v. Barber, 21 How. 582; Payne v. Hook, 7 Wall. 425; Mississippi Mills v. Cohn, 150 U. S. 202); and if a right exists which cannot be enforced at law, relief may be sought, though it exists under a State law or local usage (Clark v. Smith, 13 Peters, 195; Fitch v. Creighton, 24 How. 159; Goshorn v. Alexander, 2 Bond, 158; Fed. Cas. No. 5630), and although the

State law gives exclusive jurisdiction to a State court (*Parsons v. Lyman*, 5 Blatchf. 170; *Fed. Cas. No. 10780*; *Payne v. Hook*, 7 Wall. 425; *Lawrence v. Nelson*, 143 U. S. 215); and even if no remedy exists in the State court (*Fletcher v. Morey*, 2 Story, 555; *Fed. Cas. No. 4864*), the true test being whether there is a plain, speedy and adequate remedy at law (*Boyce v. Grundy*, 3 Peters, 215; *Gaines v. Chew*, 2 How. 619; *Williams v. Benedict*, 8 How. 107.) But the equity jurisdiction of the federal courts cannot be limited by State legislation. (*Ray v. Tatum*, 30 U. S. App. 635; 72 *Fed. Rep.* 112.) The jurisdiction embraces suits in which legal rights are to be determined (*Kohl v. U. S.*, 91 U. S. 367); and if the required citizenship exists, jurisdiction extends to the enforcement of remedies given by State statute. (*Goshorn v. Alexander*, 2 Bond, 158; *Fed. Cas. No. 5630*; *U. S. v. Block*, 3 Biss. 208; *Fed. Cas. No. 14610*; *Ex parte Biddle*, 2 Mason, 472; *Fed. Cas. No. 1391*; *Railway Co. v. Whitton*, 13 Wall. 270; *Broderick's Will*, 21 Wall. 503; *Gillis v. Downey*, 56 U. S. App. 567; 85 *Fed. Rep.* 483.) An action against a town, given by a State statute, for insufficiency of a highway or bridge, is an action at common law and within the jurisdiction of the circuit court. (*Keith v. Rockingham*, 18 Blatchf. 246.) In common-law actions depositions may be taken pursuant to State law. (*Flint v. Crawford County*, 5 Dill. 481; *Fed. Cas. No. 4871*.) When a new right is granted by statute, or a new remedy, the jurisdiction as between the law and equity side is determined by the character of the case. (*Van Norden v. Morton*, 99 U. S. 378. But see *Alderson v. Dole*, 74 *Fed. Rep.* 29.) The fact of having a right of action at law will not take away the jurisdiction in equity. (*St. Louis A. & T. H. R. Co. v. Indianapolis & St. L. R. Co.*, 9 Biss. 99; *Fed. Cas. No. 12236*.) And the jurisdiction of a fed-

eral court, sitting in equity, to enforce statutory rights if they are of an equitable nature, cannot be ousted by a State statute prescribing an action at law. (*Sheffield Furnace Co. v. Witherow*, 149 U. S. 574.) Equity sometimes takes jurisdiction on account of the parties, and sometimes on account of the relief to be administered. (*Partee v. Thomas*, 11 Fed. Rep. 773.) The jurisdiction in equity is coextensive with the jurisdiction in chancery in England, and is not affected by the jurisprudence of the State in which the court sits as to practice and procedure (*Robinson v. Campbell*, 3 Wheat. 212; *Wheeling Bridge case*, 13 How. 521; *Dodge v. Woolsey*, 18 How. 331; *Barber v. Barber*, 21 How. 582; *Payne v. Hook*, 7 Wall. 425; *Lorman v. Clarke*, 2 McLean, 568; Fed. Cas. No. 8516; *Fletcher v. Morey*, 2 Story, 555; Fed. Cas. No. 4864; *Gordon v. Hobart*, 2 Sum. 401; Fed. Cas. No. 5669; *Mississippi Mills v. Cohn*, 150 U. S. 202); but the rule adopting the equity jurisprudence of England applies only to the remedy (*Meade v. Beale*, Taney, 339; Fed. Cas. No. 9371); and if a right exists within a State which cannot be enforced by law, relief may be sought, though it originates under a State statute or a local usage. (*Clark v. Smith*, 13 Peters, 195; *Fitch v. Creighton*, 24 How. 159; *Lorman v. Clark*, 2 McLean, 568; Fed. Cas. No. 8516; *Goshorn v. Alexander*, 2 Bond, 158; Fed. Cas. No. 5630.) The jurisdiction in equity must be exercised within the limits prescribed by the constitution. (*Baker v. Biddle*, Bald. 394; Fed. Cas. No. 764; *Pierpont v. Fowle*, 2 Wood & M. 23; Fed. Cas. No. 11152.) Federal courts, sitting as courts of equity, may administer any right of an equitable nature given by the statutes of the State. (*Holland v. Challen*, 110 U. S. 15; *Aspen Min. etc. Co. v. Rucker*, Cir. Ct. Colo., 28 Fed. Rep. 220; but see *Alderson v. Dole*, 33 U. S. App. 460; 74 Fed. Rep. 29.) The circuit

courts have no jurisdiction by bill in equity, or otherwise, to enforce proceedings for limiting the liability of ship owners, under the provisions of the United States Revised Statutes. The remedy is confined to the district courts. (*Elwell v. Geibel*, 33 Fed. Rep. 71.) The federal tribunals have jurisdiction of suits to relieve against judgments of State courts obtained by imposition and fraud. (*McNeil v. McNeil*, 78 Fed. Rep. 834; *Northern Pac. R. R. Co. v. Kurtzman*, 82 Fed. Rep. 241; *Robb v. Voss*, 155 U. S. 13; *Davenport v. Moore*, 74 Fed. Rep. 945). In foreclosing a mortgage on a bridge connecting a State with a foreign country, a federal court of equity has jurisdiction to foreclose the entire lien. (*International Bridge Co. v. Holland Trust Co.*, 81 Fed. Rep. 422.) A court of equity having charge of a railroad through its receivers has authority to restrain a combination among employees to quit the service in a body with intention of injuring the road. (*Farmer's Loan & Trust Co. v. N. P. R. R. Co.*, 60 Fed. Rep. 803.) The federal courts sitting in equity, in cases of proper diverse citizenship, may enforce State judgments on material and labor claims. (*Gilchrist v. Helena Hot Springs & S. R. Co.*, 58 Fed. Rep. 708.) The jurisdiction cannot be questioned in an equity suit filed in aid of a legal action in that court by the court's direction. (*Lumley v. Wabash Ry. Co.*, 43 U. S. App. 476; 76 Fed. Rep. 66.) Courts of equity of the United States will not interfere with the taxing power of the State, except in clear cases of equitable jurisdiction. (*Robinson v. City of Wilmington*, 25 U. S. App. 141; 65 Fed. Rep. 856; *O'Brien v. Wheelock*, 78 Fed. Rep. 673; *In re Copenhagen*, 54 Fed. Rep. 606; *Sandford v. Gregg*, 58 Fed. Rep. 620.) A federal court of equity may enjoin a combination of persons from interfering with the shipping of a crew by ship owners (*Blindell v. Hagan*, 54 Fed. Rep. 40;

Ibid, 13 U. S. App. 354; 56 Fed. Rep. 696), and has jurisdiction to control a receiver in an ancillary suit brought by intervening petition (Chattanooga F. R. Co. v. Felton, 69 Fed. Rep. 273.) An action by a national bank to have declared invalid an assessment of the shares of its capital stock made by the assessing officers of a State, is a suit in equity which should be prosecuted in the circuit court in regular chancery form. (Lindsay v. First Nat. Bank, 156 U. S. 485.) The federal courts have jurisdiction of a suit to prevent a State auditor from certifying to the county clerks the proportions of an alleged illegal tax to be collected in their counties. (Western Union Tel. Co. v. Norman, 78 Fed. Rep. 13.)

Suits arising under the Constitution.—Where there is a federal question involved, the circuit court has jurisdiction without regard to the citizenship of the parties. (Wilder v. Union Nat. Bank, 9 Biss. 178; 12 Chic. L. N. 75; Fed. Cas. No. 17651. See Wiggins' Ferry Co. v. Chicago & A. R. Co., 3 McCrary, 609; 11 Fed. Rep. 381; Green v. Klinger, 10 Fed. Rep. 692, and note; Indianapolis Gas Co. v. City of Indianapolis, 82 Fed. Rep. 245; Ex parte Lennon, 166 U. S. 548.) The United States court is the final arbiter of constitutional construction, and Congress may invest it with the power to construe any constitutional law (Van Horne v. Dorrance, 2 Dall. 304; Martin v. Hunter, 1 Wheat. 304; Cohens v. Virginia, 6 Wheat. 264; Abelman v. Booth, 21 How. 506; S. C. 3 Wis. 1; The Mayor v. Cooper, 6 Wall. 247); but for its power to extend to a constitutional question it must be in a case at law or in equity. (Cohens v. Virginia, 6 Wheat. 264; see Railroad Co. v. Mississippi, 102 U. S. 305.) The power of the United States court extends over statutes, whether passed by a State legislature or by Congress, which are claimed to be in contravention of the constitution of the United

States; but not to statutes claimed to be void under a State constitution (*Calder v. Bull*, 3 Dall. 390; *Marbury v. Madison*, 1 Cranch, 137; *Dartmouth College v. Woodward*, 4 Wheat. 518; *Wiggins' Ferry Co. v. Chicago A. R. Co.*, 3 McCrary, 609; 11 Fed. Rep. 381; *McCain v. City of Des Moines*, 84 Fed. Rep. 726); and the objection must not be doubtful (*U. S. v. Jackson*, 3 Sawy. 59), but the act must be clearly subversive of the constitution. (*Central C. R. Co. v. Twenty Third Street R. Co.*, 54 How. Pr. 168.) A question on the assessment of national bank shares is not a federal question (*Williams v. Weaver*, 100 U. S. 547); but a federal question is involved when it is claimed that the statute under which the State taxing officers are proceeding is in violation of the fourteenth amendment. (*Third Nat. Bank v. Mylin*, 76 Fed. Rep. 385; *Railroad & T. Co. v. Board of Equalizers*, 85 Fed. Rep. 302. See, also, *Crystal Springs L. & W. Co. v. City of Los Angeles*, 76 Fed. Rep. 148.) The circuit court has jurisdiction of a suit brought to restrain the construction of a bridge over the navigable waters of the United States, the erection of which is authorized by an act of Congress (*Miller v. New York*, 13 Blatchf. 479; Fed. Cas. No. 9585), and of a suit arising under a State law violating the obligations of a contract. (*Louisiana State Lottery Co. v. Fitzpatrick*, 3 Woods, 222; Fed. Cas. No. 8541.) A suit cannot be said to be one arising under the constitution or laws of the United States until it has in some way been made to appear on the face of the record that some title, right, privilege, or immunity on which the recovery depends will be defeated by one construction of the constitution or a law of the United States, or sustained by an opposite construction. (*Starin v. New York*, 115 U. S. 248; *Germania Ins. Co. v. Wisconsin*, 119 U. S. 473; *City of New Orleans v. Benjamin*, 153 U. S. 411.) The ju-

risdiction does not depend upon the validity of the claim set up under the constitution or laws of the United States, but upon the fact that the claim involves a real and substantial dispute or controversy in the suit (*Nashville C. & St. L. Ry. Co. v. Taylor*, 86 Fed. Rep. 168; *St. Paul M. & M. Ry. Co. v. St. Paul & N. P. Ry. Co.*, 32 U. S. App. 372; 68 Fed. Rep. 2; *St. Joseph & G. I. Ry. Co. v. Steele*, 167 U. S. 659); but a case which in fact depends upon questions of local or general law is not within the jurisdiction, even though a reference to the federal statutes is made and a colorable claim set up. (*St. Paul M. & M. Ry. Co. v. St. Paul & N. P. Ry. Co.*, 68 Fed. Rep. 2; 32 U. S. App. 372.) A suit involving the question of the validity of a patent to land involves the constitution and laws of the United States (*Pierce v. Molliken*, 78 Fed. Rep. 196), as does a suit to restrain the enforcement of a city ordinance reducing the price of gas to such an extent that if true it would amount to taking property without just compensation (*Indianapolis Gas Co. v. City of Indianapolis*, 82 Fed. Rep. 245; *Capital City Gas Co. v. City of Des Moines*, 72 Fed. Rep. 818), and so where the ordinance reducing the price of water. (*Consolidated Water Co. v. City of San Diego*, 84 Fed. Rep. 369.)

Obligations of contract.—The obligation of a contract is that which requires the performance of the legal duties imposed by it (*Blaun v. State*, 39 Ala. 353; 84 Am. Dec. 788), and consists of that right or power over his will or action which a party by his contract confers on another (*Ogden v. Saunders*, 12 Wheat. 213; *Lapsley v. Brashears*, 4 Litt. 47), and includes everything within its object and scope. (*Sturges v. Croninshield*, 3 Wheat. 122; *Bronson v. Kinsie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608; *Blair v. Williams*, 4 Litt. 34; *Blanchard v. Rus-*

sell, 13 Mass. 1; 7 Am. Dec. 106.) It does not inhere and consist in the contract itself, but in the law applicable to the contract (*Edwards v. Kearzey*, 96 U. S. 595; *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608), and laws relating to the validity, construction, discharge, and enforcement are a part of the contract (*Edwards v. Kearzey*, 96 U. S. 595; *Von Hoffman v. Quincy*, 4 Wall. 535; *McCracken v. Hayward*, 2 How. 608), the validity, construction, and remedy being part of the obligation. (*Green v. Biddle*, 8 Wheat. 1.) The obligation of other things than contracts is not within the protecting clause of the constitution. (*Ogden v. Saunders*, 12 Wheat. 213; *Robinson v. Magee*, 9 Cal. 84; 70 Am. Dec. 638; *Blair v. Williams*, 4 Litt. 34.) A claim by a corporation that it has a contract with a city which the latter has attempted to impair is sufficient to give the circuit court jurisdiction. (*City Ry. Co. v. Citizens' Street Ry. Co.*, 166 U. S. 557.)

Suits under treaties and statutes.—When the question is merely what rights were acquired by virtue of Mexican grants which were confirmed by treaty, no question under the treaty is involved. (*Crystal Springs L. & W. Co. v. City of Los Angeles*, 82 Fed. Rep. 114.) Congress may grant exclusive jurisdiction over suits arising under the laws of the United States. (*Fox v. Ohio*, 5 How. 410; *Voorhees v. Frisbie*, 8 Bank. Reg. 154; *Ex parte Tyler*, 149 U. S. 164. See *N. O. Railroad Co. v. Mississippi*, 102 U. S. 140; *Cohens v. Virginia*, 6 Wheat. 264; *Osborn v. Bank*, 9 Wheat. 738; *Mayor v. Cooper*, 6 Wall. 247; *Gold W. & W. v. Keyes*, 96 U. S. 199; *Tennessee v. Davis*, 100 U. S. 257; see *Railroad Co. v. Mississippi*, 102 U. S. 135.) Their jurisdiction covers every legislative act of Congress (*Abelman v. Booth*, 21 How. 506; *Mayor v. Cooper*, 6 Wall. 247), so they are the instruments provided in administering security to an officer in the

discharge of his duties (*Hodgson v. Milward*, 3 Grant, 412); as seeking protection under a law is a case arising under that law. (*Hodgson v. Milward*, 3 Grant, 412; *Kulp v. Ricketts*, 3 Grant, 420.) If the right of property in the subject matter is created by an act of Congress, it is within the judicial power of the United States. (*Bank v. Roberts*, 4 Conn. 323.) A suit arises out of a law of the United States when the controversy turns upon the proper construction or application of such law (*Hatch v. Wallamet Iron B. Co.* 11 The Reporter, 630); but it must be shown how the action arises under the law (*Dowell v. Griswold*, 5 Sawy. 39; Fed. Cas. No. 4041); and it is not sufficient that the construction of the law is incidentally brought in question (*Dowell v. Griswold*, 5 Sawy. 39; Fed. Cas. No. 4041; *St. Paul M. & M. Ry. Co. v. St Paul & N. P. Ry. Co.*, 32 U. S. App. 372; 68 Fed. Rep. 2; *Wise v. Nixon*, 78 Fed. Rep. 203; *Pierce v. Molliken*, 78 Fed. Rep. 196); or of actions under the bankrupt law (*Tift v. Iron Clad Mfg. Co.*, 16 Blatchf. 48; Fed. Cas. No. 14035); or under the patent laws (*Celluloid Mfg. Co. v. Goodyear D. V. Co.*, 13 Blatchf. 375; Fed. Cas. No. 2543); or of suits by or against national banks (*Wilson Co. v. Nat. Bk.*, 103 U. S. 770; *Walker v. Windsor Nat. Bank*, 5 U. S. App. 423; 56 Fed. Rep. 76; *National Bank of Commerce v. Wade*, 84 Fed. Rep. 10; but see *Bailey v. Mosher*, 74 Fed. Rep. 15); or where a party claims title under the revenue laws, when he shows that his title in that respect is disputed (*Ex parte Smith*, 94 U. S. 455), as the right of a party must have its origin in the law (*Dowell v. Griswold*, 5 Sawy. 39; Fed. Cas. No. 4041); so it has jurisdiction on a supersedeas bond given upon suing out a writ of error to the supreme court, as this arises under a law of the United States (*Miller v. New York*, 13 Blatchf. 469; Fed. Cas. No. 9585); and of an action on a bond of a deputy collector (*Crawford v. Johnson*, Deady, 457;

Fed. Cas. No. 3369); but a suit based on false representation arises out of a fraud, and not out of an act of Congress. (*Seymour v. Phillips*, 7 Biss. 460; Fed. Cas. No. 12689.) An action for damages for injuries by negligence of officers of a vessel lies in the admiralty courts. (*Leathers v. Blessing*, 105 U. S. 626; 13 Fed. Rep. 48, note.) A State may file a bill to restrain a collector from levying under the internal revenue laws on property owned by the State. (*Merserole v. U. P. R. R. Co.*, 6 Blatchf. 356; Fed. Cas. No. 9488.) Where two corporations claim title to the same land under different acts of Congress, and the decision depends upon the construction given to those acts, a controversy arises upon laws of the United States. (*Kansas Pacific v. Atchison Railroad*, 112 U. S. 414.) If the United States has no proprietary interest in any of the railroads in a combination, the United States cannot bring an action for violation of the interstate commerce law. (*United States v. Joint Traffic Assn.*, 76 Fed. Rep. 895.) A suit for the breach of a registered common-law trademark involving no question of foreign commerce does not involve a federal question. (*Prince's Metallic Paint Co. v. Prince Mfg. Co.*, 53 Fed. Rep. 493.) A bill to protect a homestead entry man in making improvements does not involve a federal question (*King v. Lawson*, 84 Fed. Rep. 209); neither does a suit involving a question of fact as to the true course of a mining vein or body (*Bushnell v. Crooke M. & S. Co.*, 148 U. S. 682); nor a suit involving any other question of fact relative to the right of adjoining mineral claimants to follow their veins outside of the side lines of their claims. (*Montana Ore Purchasing Co. v. Boston & M. C. C. & S. M. Co.*, 85 Fed. Rep. 867; *Wise v. Nixon*, 76 Fed. Rep. 3.) Jurisdiction is not acquired over suits involving title to lands merely because the title was originally in the United States, unless the construction of the grant-

ing acts is involved. (*St. Paul M. & M. Ry. Co. v. St. Paul & N. P. Ry. Co.*, 32 U. S. App. 372; 68 Fed. Rep. 2.) An action against directors of a national bank for damages for false representations in their reports as to the solvency of the bank, whereby plaintiff was induced to loan money to the bank, does not involve a federal question (*Bailey v. Mosher*, 74 Fed. Rep. 15); neither does a bill for an injunction against the enforcement of State quarantine regulations, even though the immigrants were passed by federal health officers (*Minneapolis, St. P. & S. S. M. Ry. Co. v. Milner*, 57 Fed. Rep. 276); nor the act of a State judge in erroneously sentencing one convicted of a crime under a statute not applicable to his case. (*In re Murphy*, 87 Fed. Rep. 549.) The question whether the assignee of the beneficial interest in a chose in action may be created by an act of Congress is a question of procedure depending upon State laws. (*Edmunds v. Illinois Cent. Ry. Co.*, 80 Fed. Rep. 78.) A bill to compel a railroad company to receive cars from another line in the course of interstate commerce involves a federal question. (*Ex parte Lennon*, 166 U. S. 548; S. C. 22 U. S. App. 561; 64 Fed. Rep. 320; *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Ry. Co.*, 54 Fed. Rep. 730, 746.) A suit involving the constitutionality of certain acts of Congress involves a federal question (*Parsons v. District of Columbia*, 170 U. S. 45), as does a suit brought upon an adverse claim to mining ground (*Rutter v. Shoshone*, 75 Fed. Rep. 37; *Ib.* 87 Fed. Rep. 801), and a suit on the official bond of a cashier of a national bank conditioned for the performance of the duties thereof "according to law and the by-laws" (*Walker v. Windsor Nat. Bank*, 5 U. S. App. 423; 56 Fed. Rep. 76); and a suit brought against the receiver of a national bank, as such, to establish a claim of a depositor (*Bartley v. Hayden*, 74 Fed. Rep. 913), as well as a suit to redress a wrong caused to property

rights by a United States marshal under authority assumed by virtue of his office. (*Front St. Cable Ry. Co. v. Drake*, 65 Fed. Rep. 539.) A suit against a receiver appointed by a federal court is one arising under the constitution and laws of the United States. (*Central Trust Co. v. East Tenn. V. & G. R. Co.*, 69 Fed. Rep. 353; *Keihl v. City of South Bend*, 44 U. S. App. 687; 6 Fed. Rep. 921; *State of Washington v. Northern Pac. R. R. Co.*, 75 Fed. Rep. 333.) The question whether a plea sets up a sufficient defense, when the defense relied on arises under an act of Congress, presents a question of federal law (*Boyd v. Nebraska*, 143 U. S. 135), and so does a suit between a pre-emption claimant and a claimant under a railroad grant involving title to the land (*Florida & C. & P. R. Co. v. Bell*, U. S. App.; 87 Fed. Rep. 369), and a suit for mesne profits of land during the time between plaintiff's pre-emption entry and the issuance of the patent. (*Florida C. & P. R. Co. v. Bell*, 87 Fed. Rep. 369.) The fact that a corporation created by the laws of the United States is a party to an action gives jurisdiction on the ground that there is a federal question. (*Washington & Idaho R. Co. v. Coeur D'Alene R. & Nav. Co.*, 160 U. S. 77.)

When and how federal question must be raised.—The existence of a federal question must be shown upon the face of plaintiff's declaration or bill in order to give the federal courts jurisdiction, and it cannot be established by a petition for removal, answer, or demurrer. (*State of Indiana v. Allegheny Oil Co.*, 85 Fed. Rep. 870; *Tennessee v. Union & Planter's Bank*, 152 U. S. 454; *Pacific Gas Imp. Co. v. Ellert*, 64 Fed. Rep. 421; *Florida C. & P. R. Co. v. Bell*, 87 Fed. Rep. 369.) But the pleadings need not show what particular clause of the constitution is involved. (*Crystal Springs L. & W. Co. v. City of*

Los Angeles, 76 Fed. Rep. 148.) A federal question cannot be raised for the first time in a petition for rehearing after judgment, or on a motion to quash a fieri facias. (*Loeber v. Schroder*, 149 U. S. 580.)

Suits under patent and copyright laws.—1. Patents.—The circuit courts have plenary jurisdiction over all suits, in law and equity, arising under the patent and copyright laws. (*Nevins v. Johnson*, 3 Blatchf. 80; Fed. Cas. No. 10136; *Perry v. Corning*, 6 Blatchf. 134; Fed. Cas. No. 11003; *Goldsmith v. Am. Pa. Col. Co.*, 18 Blatchf. 82; 2 Fed. Rep. 239; *White v. Rankin*, 144 U. S. 628; *Gordon v. Anthony*, 16 Blatchf. 234; Off. Gaz. 1135; Fed. Cas. No. 5605; but see, contra, *Sayles v. Richmond F. & P. R. R. Co.*, 3 Hughes, 172; Fed. Cas. No. 12424.) An action which raises the question of infringement of a patent is an action arising under the law, and it may involve the construction of a contract as well as the patent. (*Littlefield v. Perry*, 21 Wall. 205; *Magic Ruffle Co. v. Elm City Co.*, 13 Blatchf. 151; Fed. Cas. No. 8949; *Dunham v. Bent*, 72 Fed. Rep. 60; *Young Reversible L. N. Co. v. Young L. N. Co.*, 72 Fed. Rep. 62; *Pacific Contracting Co. v. Union Pay. & C. Co.*, 80 Fed. Rep. 737; *Everett v. Haulenbeck*, 68 Fed. Rep. 911.) But if the contract is not provided for and regulated by an act of Congress, the court has no jurisdiction (*Wilson v. Sandford*, 10 How. 99; *Hartell v. Tilgham*, 99 U. S. 547; *Goodyear v. Day*, 1 Blatchf. 565; Fed. Cas. No. 5568; *Goodyear v. Union Rub. Co.*, 4 Blatchf. 63; Fed. Cas. No. 5586; *Magic Ruffle Co. v. Elm City Co.*, 13 Blatchf. 151; Fed. Cas. No. 8949; *Blanchard v. Sprague*, 1 Cliff. 288; Fed. Cas. 1516), nor will jurisdiction extend to a controversy arising under a contract concerning a patent subsequently to be obtained. (*Brooks v. Stolley*, 3 McLean, 523; Fed. Cas. No. 1962; *Nesmith v. Calvert*, 1 Wood & M. 34; Fed. Cas. No. 10123.) The

subject matter of contracts relating to patents, where neither the validity of the patent nor its infringement are concerned, does not give the United States courts jurisdiction. (*Teas v. Albright*, 13 Fed. Rep. 406; *Johnson v. Johnson*, 13 Fed. Rep. 193; *Evans v. Faxon*, 10 Fed. Rep. 312; *Beede v. Cheeney*, 5 Fed. Rep. 388; *Dennistown v. Draper*, 5 Blatchf. 336; Fed. Cas. No. 3804; *Stevens v. Richardson*, 9 Fed. Rep. 191; *Railroad Co. v. Mississippi*, 102 U. S. 135; *Ryan v. Young*, 9 Biss. 63; Fed. Cas. No. 12188; *Pliable Shoe Co. v. Bryant*, 81 Fed. Rep. 521; *Pacific Contracting Co. v. Union Pav. & C. Co.*, 80 Fed. Rep. 737.) In a suit under Rev. Stats., sec. 4915, to determine the right to a patent, the circuit courts have jurisdiction, regardless of citizenship. (*Bernardin v. Northall*, 77 Fed. Rep. 849.) Where a party's right arises under a contract, he cannot maintain a bill in equity against patentee and purchaser who purchased in violation of the license, without regard to the citizenship of the parties. (*Hill v. Whitcomb*, 1 Holmes, 317; Fed. Cas. No. 6502.) If an infringement is proved, the court will take cognizance of matters incidental, as where defendant has forfeited his rights under a license. (*Brooks v. Stolley*, 3 McLean, 523; Fed. Cas. No. 1962; *Bloomer v. Gilpin*, 4 Fish. Pat. Cas. 50; Fed. Cas. No. 1558.) If the parties are citizens of the same State, the court has no jurisdiction over a bill to obtain the cancellation of a license on account of the invalidity of a patent. (*Merserole v. Union Paper Co.*, 6 Blatchf. 356; Fed. Cas. No. 9488.) A federal question is involved in an infringement suit where the real question is as to whether a license is assignable. (*Walter A. Wood Harvester Co. v. Minneapolis Esterly Harvester Co.*, 61 Fed. Rep. 256.) The circuit court has no jurisdiction to vacate a patent on the ground of false suggestion, or that the government has no right to grant it (*Att. Gen. v. Rumford Wks.*, 32 Fed. Rep.

608; 9 Off. Gaz. 1062; Fed. Cas. No. 638 a); nor can a junior patentee maintain an action against a prior patentee to obtain an adjudication that his patent does not conflict with a prior patent. (*Celluloid Manuf. Co. v. Goodyear D. V. Co.*, 13 Blatchf. 375; Fed. Cas. No. 2543; but see *Palmer R. T. Co. v. Lozier*, 69 Fed. Rep. 346.) The jurisdiction conferred in equity exists independently of State laws, and is similar to the equity jurisdiction in England. (*Allen v. Blunt*, 1 Blatchf. 480; Fed. Cas. No. 215.) Suits in equity for infringement of a patent must be brought by the party in interest in his or her own name. (*Lorillard v. Standard Oil Co.*, 18 Blatchf. 201; 2 Fed. Rep. 902.) But a patentee and his exclusive oral licensee may jointly maintain a suit. (*Sharples v. Moaseley & T. Mfg. Co.*, 75 Fed. Rep. 595.) It is only when the court is without power to pass upon the subject-matter, or to grant the relief sought, that its jurisdiction may be questioned. (*McMillan v. Barclay*, 5 Fish. Pat. Cas. 189; Fed. Cas. No. 8902.) Mere delay in prosecuting infringers not amounting to equitable estoppel will not prevent a patent owner from maintaining suit for relief. (*Taylor v. Sawyer Spindle Co.*, 39 App. 257, 75 Fed. Rep. 301). A court of equity has jurisdiction to enjoin the use of a patented invention, and for an account of profits, although an action at law may be maintained to recover damages. (*McMillan v. Barclay*, 5 Fish. Pat. Cas. 189; Fed. Cas. No. 8902.) Where the complainant seeks an account and discovery, the Court may award damages for the breach of a contract. (*Magic Ruffle Co. v. Elm City Co.* 13 Blatchf. 151, Fed. Cas. No. 8949.) Although the patent has expired, and an injunction cannot issue, yet an account can be ordered and other relief granted. (*Imlay v. Railroad Co.*, 4 Blatchf. 227, Fed. Cas. No. 7012; *Wood Paper Co. v. Glenn's Falls Co.* 8 Blatchf. 513, Fed. Cas. No. 321; *McComb v.*

Beard, 10 Blatchf. 350, Fed. Cas. No. 8706; Blank v. Manuf. Co., 3 Wall. Jr. 196, Fed. Cas. No. 1532; Vaughan v. Cent. P. R. R. Co. 4 Sawy. 280, Fed. Cas. No. 16897; Howes v. Nute, 4 Cliff. 73, Fed. Cas. No. 6790; Smith v. Baker, 21 Leg. Int. 126; Fed. Cas. No. 13010; Jordan v. Wallace, 5 Fish. Pat. Cas. 185, Fed. Cas. No. 7523.) A suit for an accounting cannot be maintained unless there are actual profits resulting from the infringement susceptible of estimation. (Vaughan v. Central Pac. R. R. Co., 4 Sawy. 280, Fed. Cas. No. 16897.) If the validity of a patent has been sustained on final hearing, the only question which the Court will consider in a subsequent suit for an injunction by other parties is whether defendants infringe (Sawyer Spindle Co. v. Turner, 55 Fed. Rep. 979; Earl v. Southern Pacific Co., 75 Fed. Rep. 609). Injunction may be granted even though the defendant is but a user (Allington & Curtis Mfg Co. v. Booth, 72 Fed. Rep. 772.) If there is a fair controversy as to the patentability and infringement a court will postpone their consideration until the final hearing (Consolidated Fastener Co. v. Columbian Fastener Co., 73 Fed. Rep. 828; Union Switch & S. Co. v. Philadelphia & R. Co. 75 Fed. Rep. 1004; Bowers D. Co. v. New York D. Co. 77 Fed. Rep. 980; Roger's Typo-Graphic Co. v. Mergenthaler L. Co., 58 Fed. Rep. 693.) The circuit court will ordinarily accept the decision of a court of another circuit sustaining the patentability of an article (Campbell Printing Press Co. v. Prieth, 77 Fed. Rep. 976; George A. Macbeth Co. v. Lippincott Glass Co. 54 Fed. Rep. 167, 173; Heaton Peninsular Button F. Co. v. Elliott Button F. Co. 58 Fed. Rep. 220; Norton v. Eagle Automatic Can. Co. 57 Fed. Rep. 929; Tannage Plant Co. v. Donallan, 75 Fed. Rep. 287; Sawyer Spindle Co. v. Taylor, 56 Fed. Rep. 110; Brown Mfg Co. v. Mast, 53 Fed. Rep. 578; Lowers Sole Rounder Co. v. Gibbon, 74

Fed. Rep. 555; Overman Wheel Co. v. Curtis, 53 Fed. Rep. 247; Carter & Co. v. Wollschlaeger, 53 Fed. Rep. 573; Prieth v. Campbell P. P. P. & M. Co. 39 U. S. App. 591, 80 Fed. Rep. 539; American Bell Tel. Co. v. Cushman, 57 Fed. Rep. 842; but in a case involving peculiar circumstances will not be obliged to do so. (Westinghouse Air Brake Co. v. Burton Stock Car Co., 33 U. S. App. 692; 77 Fed. Rep. 301; Walter Baker & Co. v. Sander, 51 U. S. App. 421; 80 Fed. Rep. 889); or where a decisive question is raised in the latter which was not raised in the former (American Graphophone Co. v. Leeds, 77 Fed. Rep. 193; Tannage Patent Co. v. Donallan, 75 Fed. Rep. 287; Earl v. Southern Pac. Co., 75 Fed. Rep. 609; Wanamaker v. Enterprise Mfg. Co., 3 U. S. App. 414; 53 Fed. Rep. 791; Bresnalin v. Tripp G. L. Co., 33 U. S. App. 421; 72 Fed. Rep. 920.) A decision sustaining a patent is not entitled to the same weight as one declaring the patent invalid (Acme Harvester Co. v. Forbes, 69 Fed. Rep. 149.) The expiration of a patent dissolves an interlocutory injunction restraining its infringement and a pending appeal will be dismissed (Gamewell Fire Alarm T. Co. v. Municipal Signal Co., 21 U. S. App. 12116; 61 Fed. Rep. 208.) A bill which makes profert of letters patent will not be held bad for want of sufficient description in a suit for infringement. A court has power to declare on demurrer that a patent is invalid for want of novelty and utility (American Fibre Chamois Co. v. Williamson, 69 Fed. Rep. 247), but it is a power which should only be exercised in a very plain case (American Fibre Chamois Co. v. Williamson, 69 Fed. Rep. 247). When a patent is about to expire the court may refuse an injunction (McDonald v. Milier, 84 Fed. Rep. 344; Russell v. Kern, 34 U. S. App. 90; 69 Fed. Rep. 94).

2. *Copyrights.*—The jurisdiction of the Federal courts of a suit between citizens of the same States to

recover damages in cases of unauthorized public performances of copyrighted compositions depends entirely upon Rev. Stats., sec. 4966 (*Daly v. Brady*, 69 Fed. Rep. 285). A court of equity has jurisdiction over a suit for an infringement of copyright (*Pierpont v. Fowle*, 2 Wood & M. 23; Fed. Cas. No. 11152); but it has no jurisdiction in equity to protect the rights of an author at common law, where the parties are citizens of the same State (*Boucicault v. Hart*, 13 Blatchf. 47; Fed. Cas. No. 1692); nor if the controversy arises out of a contract, and not under the statute (*Little v. Hall*, 18 How. 165; *Pulte v. Derby*, 5 McLean, 328; Fed. Cas. No. 11465, nor to enforce penalties and forfeitures incurred under the statute. (*Stevens v. Gladding*, 17 How. 447; *Stevens v. Cady*, 2 Curt. 200; Fed. Cas. No. 13395.) The court will rarely interpose its judicial knowledge touching the question of originality (*Henderson v. Tomkins*, 60 Fed. Rep. 758). On proof of infringement of a copyright injunction should issue without proof of actual damage (*Fishel v. Lueckel*, 53 Fed. Rep. 499), but before an injunction will issue, plaintiff must show affirmatively, beyond any doubt, that he has complied with the copyright law (*American Trotting Register Assn. v. Gocher*, 70 Fed. Rep. 237). An alleged infringer of a copyright cannot be required by answer or otherwise to disclose facts upon which a claim against him for penalties and forfeitures accruing under §§4963, 4965, may depend (*Snow v. Mast*, 63 Fed. Rep. 623). A suit which charges infringement, but which is in fact merely a suit between author and publisher, is not a case arising under the copyright laws (*Silver v. Holt*, 84 Fed. Rep. 809).

Amount in controversy.—In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a

court of the United States, it is settled that such jurisdiction cannot attach if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, although the damage be laid in the declaration at a larger sum. (*Vance v. Vandercock Co.*, 170 U. S. 468; *Hayward v. Nordbery Mfg. Co.*, 54 U. S. App. 639; 85 Fed. Rep. 4.) The matter is the subject of litigation, and its value is to be determined by the amount claimed (*Culver v. Crawford*, 4 Dill. 239; Fed. Cas. No. 3468; *Gordon v. Longest*, 16 Peters, 97; *Kanouse v. Martin*, 15 How. 198; *Muns v. Dupont*, 2 Wash. C. C. 463; Fed. Cas. No. 9931; *Ladd v. Tudor*, 3 Wood & M. 325; Fed. Cas. No. 7975; *Hartshorn v. Wright*, Peters C. C. 64; Fed. Cas. No. 6169; *Crawford v. Burnham*, 4 Am. L. T. 328; *Green v. Liter*, 8 Cranch, 229; *American Fertilizing Co. v. North Board*, 43 Fed. Rep. 609; *Weaver v. Norway Tack Co.*, 80 Fed. Rep. 700. See contra, *Holden v. Utah & M. M. Co.*, 82 Fed. Rep. 209; *Vance v. Vandercock*, 170 U. S. 468), in a case of detinue (*Bennet v. Butterworth*, 8 How. 124), on a money demand (*Culver v. Crawford*, 4 Dill. 239; Fed. Cas. No. 3468), on a contract (*Sherman v. Clark*, 3 McLean, 91; Fed. Cas. No. 12763), in ejectment (*Lanning v. Dolph*, 4 Wash. C. C. 624; Fed. Cas. No. 8073), on a covenant or a bond (*Victor S. M. Co. v. Mingos*, 25 Pittsb. L. J. 125; Fed. Cas. No. 16936), for a penalty (*Martin v. Taylor*, 1 Wash. C. C. 1; Fed. Cas. No. 9166), or on a penal bond (*U. S. v. McDowell*, 4 Cranch, 316; *Post Master Gen. v. Cross*, 4 Wash. C. C. 326; Fed. Cas. No. 11306), in an action sounding in damages (*Hulsekamp v. Teel*, 2 Dall. 358; *Murphy v. Howard*, Hemp. 205), to recover back taxes (*King v. Wilson*, 1 Dill. 555; Fed. Cas. No. 7810), in a suit to restrain directors of a corporation from paying out money (*Hill v. Glasgow R. Co.*, 41

Fed. Rep. 610), in an action to restrain a shipper from prosecuting a multiplicity of suits (*Texas & P. K. Ry. Co. v. Kuteman*, 13 U. S. App. 99; 54 Fed. Rep. 547), but in an action to set aside fraudulent conveyances the amount of the creditor's claim, and not the value of the land conveyed, is the test (*Werner v. Murphy*, 60 Fed. Rep. 769), and in an action brought on behalf of all creditors to administer a trust fund, the amount of the fund to be administered determines the question of jurisdiction (*Putnam v. Timothy Dry Goods & C. Co.*, 79 Fed. Rep. 454; and see *Smithson v. Hubbell*, 81 Fed. Rep. 593). The amount due each of several suitors must exceed the amount required to give jurisdiction. (*Woodman v. Latimer*, 2 Fed. Rep. 842; *Adams v. Board*, *McCahon*, 235; *Holt v. Bergevin*, 60 Fed. Rep. 1.) Evidence may be given of the value of the matter in dispute. (*Ex parte Bradstreet*, 7 Peters, 634.) The value of the object to be removed governs an abatement of a nuisance. (*Mississippi & Mo. R. R. Co. v. Ward*, 2 Black, 485; *Rainey v. Herbert*, 3 U. S. App. 592; 55 Fed. Rep. 443.) Under act of Congress, March 3, 1887, the circuit court has not jurisdiction in a controversy between citizens of different States, if the amount in dispute does not exceed two thousand dollars, excluding any interest which may have accrued up to the date of suit. (*Moore v. Town of Edgefield*, 32 Fed. Rep. 498.) But if the amount in dispute, exclusive of interest and costs, exceeds such sum, although it is made up of distinct demands of less value than two thousand dollars, and although the plaintiff may have acquired such demands by assignment, the court has jurisdiction (*Bernheim v. Birnbaum*, 30 Fed. Rep. 885); *Bowden v. Burnham*, 19 U. S. App. 448; 59 Fed. Rep. 752; *Fitchett v. Blows*, 56 U. S. App. 597; 74 Fed. Rep. 47; but distinct demands cannot be united in

one suit by a plaintiff against several defendants in order to give the court jurisdiction (*Walter v. Northeastern R. Co.*, 147 U. S. 370; *Fishback v. Western Union Tel. Co.*, 161 U. S. 96; *Citizens' Bank v. Cannon*, 164 U. S. 319; *Busey v. Smith*, 67 Fed. Rep. 13). Where a person appeared generally and subsequently answered, the case was not affected by the act of 1887, increasing the jurisdictional amount (*Platt v. Manning*, 34 Fed. Rep. 817). In a suit to recover more than \$2,000, a part of which was not yet due, the amount is sufficient to give jurisdiction, where the State statute authorizes a suit on a claim before due (*Schunk v. Moline, Milburn & Stoddart Co.*, 147 U. S. 500). If several persons have a common, undivided interest, although separable as between themselves, the amount of their joint interest is the test of their jurisdiction (*Herbert v. Rainey*, 54 Fed. Rep. 248; *Hartford Fire Ins. Co. v. Bonner Mercantile Co.*, 15 U. S. App. 134; 56 Fed. Rep. 378); but this is not true where the claims are in their nature separate (*Holt v. Bergevin*, 60 Fed. Rep. 1; *Walter v. Northeastern Ry. Co.*, 147 U. S. 370; *Putney v. Whitmore*, 66 Fed. Rep. 385). Where shareholders are individually liable for the debts of a corporation, the claims of creditors against shareholders are several and cannot be joined to make up the required amount (*Auer v. Lombard*, 33 U. S. App. 438; 72 Fed. Rep. 209). In an action for an injunction the amount in dispute for jurisdictional purposes is not determined by the amount which might be recovered in an action at law for damages, but by the value of the right to be protected, or the extent of the injury to be prevented by the injunction (*Nashville C. & St. L. Ry. Co. v. McConnell*, 82 Fed. Rep. 65.) In an action by a taxpayer to restrain the issue of municipal bonds, the amount of taxes which plaintiff would have to pay and not the entire issue is the test of jurisdictional

amount (*Colvin v. City of Jacksonville*, 158 U. S. 456). An aggregation of the amounts of taxes to be collected in different counties cannot be made for the purpose of obtaining the jurisdictional amount of \$2,000 (*Fishback v. Western Union Tel. Co.*, 161 U. S. 96; *Citizens' Bank of La. v. Cannon*, 164 U. S. 319). In an action for breach of warranty of title, interest on the amount paid* for the land may be included in reckoning the amount in controversy (*Brown v. Webster*, 156 U. S. 328.) In a counterclaim of the class which defendant is required by local statute to set up or be forever barred from litigating the claim is a part of the matter in dispute, and the amount claimed should be added to the amount sued for in determining jurisdictional amount (*Lee v. Continental Ins. Co.*, 74 Fed. Rep. 424). In a suit to foreclose a mortgage the amount of insurance premiums paid by the mortgagee is properly added as a part of the jurisdictional amount (*Coolidge v. Ray*, 75 Fed. Rep. 39). In a suit by a receiver to determine his right to fix rates at which he should furnish waters, it is the value of the right which constitutes the amount in controversy (*Lanning v. Osborne*, 75 Fed. Rep. 657). Where by express stipulation an attorney's fee is to be collected in case of suit upon a debt, such fee may be added to the debt for the purpose of making up the jurisdictional amount (*Rogers v. Riley*, 80 Fed. Rep. 759). In an action upon matured negotiable bonds neither the interest on the bonds nor coupons after their maturity constitutes a part of the matter in dispute (*Greene County v. Kortrecht*, 81 Fed. Rep. 241; and see *Home & Foreign Inv. & A. Co. v. Ray*, 69 Fed. Rep. 657). In a suit to enjoin the collection of a tax, the amount in controversy is the amount of such tax and not the value of the land (*Linehan Ry. Transfer Co. v. Pendergrass*, 36 U. S. App. 48; 70

Fed. Rep. 1). The Federal courts have jurisdiction of suits brought by the United States without regard to the amount in controversy (*United States v. Flournoy Live Stock & R. E. Co.*, 71 Fed. Rep. 576; *United States v. Sayward*, 160 U. S. 493). A suit against a national bank receiver is not within the jurisdiction of the Federal court, unless the amount in controversy exceeds \$2,000. (*Smithson v. Hubbell*, 81 Fed. Rep. 593). An apparent defect of jurisdiction for lack of a matter in controversy of sufficient pecuniary value can be availed of only by appeal or writ of error (*In re Tyler*, 149 U. S. 164). Where the question of want of proper amount to support jurisdiction was not raised until after decree, the court will allow an affidavit as to the amount to be filed *nunc pro tunc* (*Carr v. Fife*, 45 Fed. Rep. 209; see, also, *Carr v. Fife*, 156 U. S. 494). Leave to amend should be given where it does not affirmatively appear that the court is without jurisdiction (*Home Ins. Co. of N. Y. v. Nobles*, 63 Fed. Rep. 641). The fact that the answer sets up payment, reducing the sum claimed by plaintiff below \$2,000, does not deprive the court of jurisdiction if the court must hear testimony upon the point (*Stillwell Bierce & S. V. Co. v. Williamston Oil & F. Co.*, 80 Fed. Rep. 68; *Bennett v. Forest*, 69 Fed. Rep. 421; *Pickham v. Wheeler Bliss Mfg. Co.*, 46 U. S. App. 605; 77 Fed. Rep. 663). When one sues for an amount which exceeds \$2,000, but at the trial his own evidence shows that he actually claims less than \$2,000, the court is without jurisdiction (*Cabot v. McMaster*, 61 Fed. Rep. 129; *United States Ex. Co. v. Poe*, 61 Fed. Rep. 475; *Horst v. Merkeley*, 59 Fed. Rep. 502; *Holden v. Utah & M. M. Co.*, 82 Fed. Rep. 209); but not if merely because his counsel admit after the evidence is all in that the recovery must be for less than \$2,000 (*Wheeler Bliss Mfg. Co. v. Pickham*, 69 Fed. Rep. 419). A court hav-

ing jurisdiction of an original suit has jurisdiction of an ancillary suit, regardless of the amount in controversy (*Hill v. Kuhlman*, 87 Fed. Rep. 498). The court does not acquire jurisdiction where the amount claimed is not claimed in good faith (*Bank of Arapahoe v. Bradley & Co.*, 36 U. S. App. 519; 72 Fed. Rep. 867; *American Wringer Co. v. City of Ionia*, 76 Fed. Rep. 6). Where the complaint on its face shows that the amount in dispute exceeds \$2,000, and the court is unable to determine as a matter of law that there can be no recovery, the question will not be determined on ex parte affidavits (*Holden v. Utah & M. Machinery Co.*, 82 Fed. Rep. 209). A bill seeking a mandatory injunction and alleging damages largely exceeding \$2,000, is sufficient to give the court jurisdiction in the absence of a plea to the jurisdiction, although the allegation of amount was denied in the answer and not sustained by the proof (*Butcher's & Drover's Stockyards Co. v. Louisville & N. R. R. Co.*, 31 U. S. App. 252; 67 Fed. Rep. 35). If the complaint sets up an amount greater than \$2,000, and there is no ground to believe that the value was overstated intentionally, jurisdiction is not lost because the recovery is for less than the amount sued for (*Jones v. Harvesting Mach. Co.*, 53 U. S. App. 408; 82 Fed. Rep. 295; *Scott v. McDonald*, 165 U. S. 58). The right to commence a suit in a trademark case does not depend upon the amount in controversy, notwithstanding the act of 1887, 1888 (*Glotin v. Oswald*, 65 Fed. Rep. 151).

Suits by and against corporations.—In suits by or against a corporation, the pleading must aver that the corporate body is a corporation so created by law. (*Lafayette Co. v. French*, 18 How. 404; *Mannf. Nat. Bank v. Baack*, 8 Blatchf. 137; Fed. Cas. No. 9052; see *Piquignot v. Penn. R. R. Co.*, 16

How. 104; Muller v. Dows, 94 U. S. 444; Marshall v. Balt. & O. R. R. Co., 16 How. 314; Express Co. v. Kountze, 8 Wall. 342. A limited partnership association organized under the laws of Pennsylvania is a corporation (Youngstown Coke Ltd. v. Andrews Bros., 79 Fed. Rep. 669; contra, Carnegie v. Hulbert, 10 U. S. App. 383; 53 Fed. Rep. 10). It is necessary to state where the corporation is located as its place of business. (Ketchum v. Farmer's L. & Tr. Co., 4 McLean, 1; Fed. Cas. No. 7736; New York & E. R. R. Co. v. Shepard, 5 McLean, 455; Fed. Cas. No. 10198; Manuf. Nat. Bank v. Baack, 8 Blatchf. 137; Fed. Cas. No. 9052. If judicial notice can be taken of the act of incorporation, an averment of its citizenship is sufficient. (Covington Drawbridge Co. v. Shepherd, 21 How. 112; 20 How. 227.) It is not necessary to allege the citizenship of the incorporators. (Ketchum v. Farmer's L. & Tr. Co., 4 McLean, 1; Fed. Cas. No. 7736; but see Wilson v. City Bank, 3 Sum. 422; Breithaupt v. Bank, 1 Peters, 238.) For the purposes of jurisdiction, corporations are deemed citizens of the State which creates them (Bank of U. S. v. Deveaux, 5 Cranch, 61; Hope Ins. Co. v. Boardman, 5 Cranch, 57; U. S. v. Planter's Bank, 9 Wheat. 904; Bank of Slocum, 14 Peters. 60; Louisville etc. R. R. Co. v. Letson, 2 How. 497; Wheedon v. Camden & A. R. R. Co., 4 Am. Law Reg. 296; Marshall v. Balt. & Ohio R. R. Co., 16 How. 314; Rundle v. Del. & R. Can. Co., 14 How. 80; Covington D. Co. v. Shepherd, 20 How. 227; Lafayette Ins. Co. v. French, 18 How. 404; Railway Co. v. Whitton, 13 Wall. 270; Ohio & M. R. R. Co. v. Wheeler, 1 Black, 286; Dennistown v. N. Y. & N. H. R. R. Co., 1 Hilt. 62; Bonaparte v. Camden & A. R. R. Co., Bald. 205; Fed. Cas. No. 1617; Greeley v. Smith, 3 Story, 76; Fed. Cas. No. 5747; Bliven v. New Eng. Screw Co., 3 Blatchf. 111; Fed.

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Lumber, 14
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Cas. No. 1550; *Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031; *Barrow Steamship Co. v. Kane*, 170 U. S. 100; *St. Louis R. Co. v. Pac. Ry. Co.*, 52 Fed. Rep. 770; *Southern Pac. Co. v. Denton*, 146 U. S. 202; *Louisville Tr. Co. v. Louisville N. A. & C. R. Co.*, 43 U. S. App. 550; 75 Fed. Rep. 433; *Balt. & Ohio R. R. Co. v. McLaughlin*, 43 U. S. App. 181; 73 Fed. Rep. 519), irrespective of the individual citizenship of their members (*Ohio & M. R. R. Co. v. Wheeler*, 1 Black, 286; *Railroad Co. v. Harris*, 12 Wall. 65; *Pomeroy v. New York & N. H. R. R. Co.*, 4 Blatchf. 120; Fed. Cas. No. 11261; *Hatch v. Chicago R. I. & P. R. R. Co.*, 6 Blatchf. 105; Fed. Cas. No. 6204; *Trust Co. v. Maquillan*, 3 Dill. 279; Fed. Cas. No. 4668; *Monnett v. Milwaukee etc. R. R. Co.*, 3 Dill. 460; Fed. Cas. No. 9636; *Youngstown Coke Co. v. Andrews Bros.*, 79 Fed. Rep. 669); may sue and be sued in the circuit court, (*Bank of U. S. v. Deveau*, 5 Cranch, 61; *Parsons v. Greenville & C. R. Co.*, 1 Hughes, 279; Fed. Cas. No. 10776; *Minnot v. Phila. W. & B. R. R. Co.*, 2 Abb. U. S. 323; Fed. Cas. No. 9645); and may institute actions in another State, although associated with corporations of that State. (*Chicago & N. W. R. R. Co. v. Chicago & P. R. R. Co.*, 6 Biss. 219; Fed. Cas. No. 2665.) An allegation that plaintiff is a corporation, organized and domiciled in the State of New York, is sufficient (*Ward v. Blake Mfg. Co.*, 12 U. S. App. 295; 56 Fed. Rep. 437). An allegation that a corporation is a citizen of a given State, is not sufficient. It should be alleged that the corporation was created under the laws of the State (*Lonergan v. Illinois Cent. Ry. Co.*, 55 Fed. Rep. 550; *Frisbie v. Chesapeake & O. Ry. Co.*, 57 Fed. Rep. 1). If a corporation is created by the laws of two States, it is deemed a separate body in each State and cannot sue a citizen in either State in the circuit court. (*Ohio & M. R. R. Co. v. Wheeler*, 1

Black, 286; *St. Joseph & Grand Island Ry. Co. v. Steele*, 167 U. S. 659; *Phinizy v. Augusta & K. R. R. Co.*, 56 Fed. Rep. 273; *Western & A. R. Co. v. Roberson*, 22 U. S. App. 187; 61 Fed. Rep. 592.) But a citizen of one of the States may sue it in the other State (*Muller v. Dows*, 94 U. S. 444; *Railway Co. v. Whitton*, 13 Wall. 270; *Vose v. Reed*, 1 Woods, 647; Fed. Cas. No. 17011; *Culbertson v. Wabash Nav. Co.*, 4 McLean, 544; Fed. Cas. No. 3464; *Williamson v. Krohn*, 31 U. S. App. 325; 66 Fed. Rep. 655.) So where the legislature of a State has confirmed the character of a corporation, a citizen of that State may maintain an action against the corporation in the circuit court (*Marshall v. Balt. & O. R. R. Co.*, 16 How. 314; *Wheeling v. Mayor*, 1 Hughes, 90; Fed. Cas. No. 17502); but by complying with a State statute which permits foreign corporations to become domestic corporations by taking certain steps, a foreign corporation does not become a citizen of such State so as to affect the jurisdiction of the United States courts over it (*Holdingworth v. Southern R. R. Co.*, 86 Fed. Rep. 353; *St. Louis & S. F. R. R. Co. v. James*, 161 U. S. 545). Where railroad corporations, created under the laws of different States, operate through such States in one connected line, the consolidated corporation is to be considered a citizen of either State (*Railway Co. v. Whitton*, 13 Wall. 270; *Mulher v. Dows*, 94 U. S. 444; *St. Lawrence A. & T. R. R. Co. v. Indiana & St. L. R. R. Co.*, 12 Chic. L. N. 73); and where three railway corporations, organized under the laws of three different States, are consolidated under the laws of each of the States, a citizen of one of the States cannot maintain an action in a Federal circuit court, sitting in that State, against the corporation on the ground of diverse citizenship (*Baldwin v. Chicago & N. W. R. R. Co.*, 86 Fed. Rep. 167; *Missouri Pac. Ry. Co. v. Meeh*,

32 U. S. App. 691; 69 Fed. Rep. 753); but a corporation which merely leases a road in another State to operate therein, does not thereby become a citizen of such State (*Balt. & Ohio R. R. Co. v. Koontz*, 3 *Morr. Tr.* 35; *Brownell v. Troy & B. R. R. Co.*, 18 *Blatchf.* 243; 3 *Fed. Rep.* 761); or the mere exercise of powers granted by a State does not make the corporation a citizen of the State (*St. Joseph & Grand Island Ry. Co. v. Steele*, 167 U. S. 659); and the mere appointment of an agent on whom process may be served will not make a corporation a citizen. (*Hatch v. Chic. R. I. & P. R. R. Co.*, 6 *Blatchf.* 105; *Fed. Cas. No.* 6204; *Owen v. New York Life Ins. Co.*, 1 *Hughes*, 322; *Fed. Cas. No.* 10631; *Ellerman v. New Orleans M. & T. R. R. Co.*, 2 *Woods*, 120; *Fed. Cas. No.* 4382; *Insurance Co. v. Francis*, 11 *Wall.* 210; contra, *New York Piano Co. v. N. H. Steamboat Co.*, 2 *Abb. Pr. N. S.* 357; *Contl. Ins. Co. v. Casey*, 27 *Gratt.* 216; *People v. Judge*, 21 *Mich.* 577; 4 *Am. Rep.* 504; *Home Ins. Co. v. Davis*, 29 *Mich.* 238; *Shainwald v. Davids*, 69 *Fed. Rep.* 704.) Failure of a foreign corporation to file a copy of its charter with the officers of a State, as required by the State laws, does not affect its rights to sue in the Federal court in the State, whatever effect the omission may have upon the right to sue in the State court. (*Columbia Wire Co. v. Freeman Wire Co.*, 71 *Fed. Rep.* 302.) A national bank of another State may sue in the Federal courts, although defendants are citizens of the same State as that in which the bank is established. (*Union Nat. Bank v. Chicago*, 3 *Biss.* 82; *Fed. Cas. No.* 14374; *Bank of Omaha v. Douglass Co.*, 3 *Dill.* 298; *Fed. Cas. No.* 4809; *Commercial Bank v. Simmons*, 1 *Flip.* 449; *Fed. Cas. No.* 3062.) A State legislature has the right to exclude a foreign corporation (*Doyle v. Contl. Ins. Co.*, 94 U. S. 535; *State v. Doyle*, 40 *Wis.* 220; *Relfe v. Rundle*, 103 U. S. 222); but cannot deprive it of its

right to sue in a Federal court by exacting a stipulation not to remove a cause from the State court. (Metropolitan L. Ins. Co. v. Harper, 3 Hughes, 260; Fed. Cas. No. 9505.) The rule as to citizenship applies to public municipal corporations (Cowles v. Mercer Co., 7 Wall. 118; Barclay v. Levee Commrs., 1 Woods, 254; Fed. Cas. No. 977; Tanstall v. Madison, 30 La. Ann. 471); and they may sue and be sued in the circuit court (Cowles v. Mercer Co., 7 Wall. 118; McCoy v. Washington, 3 Wall. Jr. 381; 3 Phila. 290; Fed. Cas. No. 8731); but a State cannot maintain an action in the circuit court. (Georgia v. Brailsford, 3 Dall. 1; State v. Babcock, 4 Wash. C. C. 345; Fed. Cas. No. 10163; Wisconsin v. Duluth, 2 Dill. 406; Fed. Cas. No. 17902.) In all cases where a Federal court can take jurisdiction of controversies between citizens, whether of different States or of the same State, it will take jurisdiction of like controversies between corporations, and treat them as citizens of the State under whose laws they were created or continue to exist (Kansas Pacific v. Atchison Railroad, 112 U. S. 414).

Defective averments of diverse citizenship of corporations are waived by the filing of an answer and the taking of testimony by both parties (Kennedy v. Solar Refining Co., 69 Fed. Rep. 715; but see Central Trust Co. v. Virginia T. & C. Steel & Iron Co., 55 Fed. 769). An allegation that defendant "is a citizen of the State of Illinois," is a sufficient allegation of citizenship of the corporation, in the absence of objection by a plea in abatement (Chicago Lumber Co. v. Comstock, 34 U. S. App. 414; 71 Fed. Rep. 477). An averment that defendant is a corporation "duly established by law, and having its principal place of business in Boston, Massachusetts," is not sufficient (New York & N. E. R. Co. v. Hyde, 5 U. S. App. 443; 56 Fed. Rep. 188), nor is an allegation that defendant is a corporation operating a

railroad, and having an agent in Arkansas (St. Louis I. M. & S. Ry. Co. v. Newcom, 12 U. S. App. 503; 56 Fed. Rep. 951). In the absence of an objection an allegation that defendant is a corporation of Canada was held sufficient (Grand Trunk Ry. Co. v. Tennant, 21 U. S. App. 682; 66 Fed. Rep. 922). The fact of incorporation cannot be argumentatively averred (St. Louis I. M. & S. Ry. Co. v. Newcom, 12 U. S. App. 503; 56 Fed. Rep. 951). An averment that defendant is a corporation domiciled and doing business in New Orleans and a citizen of New Jersey, is not sufficient (American Sugar Ref. Co. v. Johnson, 13 U. S. App. 681; 60 Fed. Rep. 503). The Federal court has jurisdiction upon the ground of diverse citizenship of a foreign corporation in an action brought in the district in which plaintiff resides when such corporation is subjected by statute to the jurisdiction of the courts of the State in which the district is located (Dinzy v. Illinois Cent. Ry. Co., 61 Fed. Rep. 49). The district of the domicile of a corporation, in the absence of a charter provision, is the place where the stockholders' and directors' meetings are held, where the records thereof are kept, and where the principal officers have their offices, rather than a district where the general administrative offices of the heads of departments are located (Interstate Commerce Com. v. Texas & P. Ry. Co., 20 U. S. App. 1; 57 Fed. Rep. 948). An action may be maintained in a Federal court in one State by a citizen and resident of another State against a foreign corporation, doing business in the former State for a personal tort committed abroad, which would have been actionable if committed in the State, or elsewhere in this country (Barrow Steamship Co. v. Kane, 170 U. S. 100). A court does not acquire jurisdiction by reason of diversity of citizenship of a corporation, collusively organized for the purpose of bringing suit (Lehigh Min.

& Mfg. Co. v. Kelly, 64 Fed. Rep. 401; Lehigh M. & M. Co. v. Kelly, 160 U. S. 327).

Where the United States is a party.—As the judicial power extends to controversies in which the United States is a party (*Mississippi v. Johnson*, 4 Wall. 498; *George v. Stanton*, 6 Wall. 50), it may institute a proceeding at common law, to condemn lands for the use of the government (*U. S. v. Smith*, 1 Hughes, 347; Fed. Cas. No. 16335); or to condemn property used in aid of insurrection (*Union Ins. Co. v. U. S.*, 6 Wall. 759); or file a bill in equity to set aside a fraudulent conveyance; or bring an action on a contract, unless a different mode is prescribed by law (*Dugan v. U. S.*, 3 Wheat. 172; *U. S. v. Barker*, 1 Paine, 156; Fed. Cas. No. 14517); or on a bond given to secure the landing of a cargo under the embargo laws (*Durousseau v. U. S.*, 6 Cranch, 307); or for the breach of a bond in an action brought by a postmaster. (*P. M. Genl. v. Early*, 12 Wheat. 136.) The circuit court has jurisdiction of an ejectment suit by a landowner against an agent of the United States in charge of public improvement which is alleged to be built on plaintiff's land, but the United States cannot be made a party without its own consent (*Scranton v. Wheeler*, 16 U. S. App. 152; 57 Fed. Rep. 803). The United States cannot be sued in their own courts without their consent, nor in any court for torts committed in their name by their officers (*Hill v. United States*, 149 U. S. 593).

The giving of the supreme court original jurisdiction in cases where a State is a party does not withhold from Congress the power to vest in circuit courts concurrent jurisdiction in such cases. (*State v. Lewis*, 12 Fed. Rep. 1, citing *Pennsylvania v. Wheeling Br. Co.*, 13 How. 520.) The Federal courts have jurisdiction of suits brought by the

United States without regard to the amount in controversy (*United States v. Flournoy Live Stock & R. E. Co.*, 71 Fed. Rep. 576; *United States v. Sayward*, 160 U. S. 493).

Controversies between citizens of different States.—The jurisdiction of the circuit court extends to controversies between citizens of different States (*Ohio & M. R. R. Co. v. Wheeler*, 1 Black, 286; but see *Hope Ins. Co. v. Boardman*, 5 Cranch, 57), no matter of what State the plaintiff is a citizen (*Brooks v. Bailey*, 20 Blatchf. 85); and the situation of the parties, and their characters, determine the jurisdiction (*Connolly v. Taylor*, 2 Peters, 556); but it has no jurisdiction of a suit between parties of the same State (*Van Antwerp v. Hulbard*, 8 Blatchf. 285; Fed. Cas. No. 16827; *Livingston v. Van Ingen*, 1 Paine, 45; Fed. Cas. No. 8420; *Merserole v. U. P. C. Co.*, 6 Blatchf. 356; Fed. Cas. No. 9488; *Teal v. Walker*, Fed. Cas. No. 13812); and if neither party is a citizen of the State where suit is brought it has no jurisdiction (*Connolly v. Taylor*, 2 Peters, 506; *Shute v. Davis*, Peters C. C. 431; Fed. Cas. No. 3331; *Goodyear v. Day*, 1 Blatchf. 565; Fed. Cas. No. 5568; *Kelley v. Harding*, 5 Blatchf. 502; Fed. Cas. No. 7670); but a citizen of a State where suit is brought may sue a citizen of another State (*Harrison v. Rowan*, Peters C. C. 489; Fed. Cas. No. 6140; *Kitchen v. Strawbridge*, 4 Wash. C. C. 84; Fed. Cas. No. 7854). A party who resides in a State with his family, and carries on business there, is deemed a citizen of that State (*Knox v. Greenleaf*, 4 Dall. 360; *Byrne v. Holt*, 2 Wash. C. C. 282; Fed. Cas. No. 2272); but if his residence is only temporary and for a special purpose, with the *animo revertendi*, he does not thereby become a citizen (*Prentiss v. Barton*, 1 Brock. 389; Fed. Cas. No. 11384; *Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Gar-*

diner v. Sharp, 4 Wash. C. C. 609; Fed. Cas. No. 5236; Read v. Bertrand, 4 Wash. C. C. 514; Fed. Cas. No. 11601). A third party may not testify to the direct question whether plaintiff was a citizen of a given State at a given date (Rucker v. Bolles, 9 U. S. App. 358; 80 Fed. Rep. 504). To have the right to sue, a party must be a citizen of some State; so a citizen of a Territory cannot institute an action in the circuit court, although he be joined with the citizen of a State (New Orleans v. Winter, 1 Wheat. 91; Koenigsberger v. Richmond S. M. Co., 158 U. S. 41). A citizen of Indian Territory cannot sue a citizen of a State in the Federal courts (Snead v. Sellers, 30 U. S. App. 8; 66 Fed. Rep. 371); so a citizen of the District of Columbia cannot maintain an action in the circuit court (Hepburn v. Ellzey, 2 Cranch, 445; New Orleans v. Winter, 1 Wheat. 92; Gassies v. Ballou, 6 Peters, 761; Scott v. Jones, 5 How. 343; Barney v. Baltimore, 6 Wall. 280; Texas v. White, 7 Wall. 700; Railroad Co. v. Harris, 12 Wall. 65; Wescott v. Fairfield, Peters C. C. 45; Fed. Cas. No. 17418; Hartshorne v. Wright, Peters C. C. 64; Fed. Cas. No. 6169); but an Indian woman who marries and lives with a citizen of a State and adopts the habits of a civilized life may sue citizens of other States in the Federal courts (Hatch v. Ferguson, 57 Fed. Rep. 959.) Prior to the act of March 3, 1875, the circuit court had jurisdiction only when the suit was between a citizen of the State and a citizen of another State; and if there were several plaintiffs and several defendants, each one of each class must have possessed the requisite character as to citizenship. (Strawbridge v. Curtis, 3 Cranch, 267; Coal Co. v. Blatchford, 11 Wall. 172.) An heir compelled to pay a mortgage note which another had agreed to pay may sue, although the ancestor and defendant are citizens of the same State. (Weems v. George, 13 How. 190.) A citizen of one

State may sue for lands although he derives title from a citizen of the State where the lands are. (McDonald v. Smalley, 1 Peters, 620.) A mortgagee may maintain ejectment against any citizen of another State. (McDonald v. Smalley, 1 Peters, 620.) If a suit is pending between citizens of different States, defendants may file an interpleader, although one of the parties is a citizen with complainant. (Stone v. Bishop, 4 Cliff. 593; Fed. Cas. No. 13482.) When a Federal court has acquired jurisdiction by reason of diverse citizenship it does not lose jurisdiction when other parties interested in the property intervene though the latter are citizens of the same State with those whose interests are adverse (Park v. New York L. E. & W. R. Co., 70 Fed. Rep. 641); but the court does not gain jurisdiction of the controversy between the intervenor and the adverse party except in certain cases. (United Electric Securities Co. v. Louisiana Electric Light Co., 68 Fed. Rep. 673.) The circuit court has jurisdiction of an action brought by a citizen of one State against a citizen of another State on a judgment recovered in a State court (Barr v. Simpson, Bald. 543; Fed. Cas. No. 1038; Putnam v. New Albany, 4 Biss. 365; Fed. Cas. No. 11481; Wilson v. City Bank, 3 Sumn. 422; Fed. Cas. No. 17797; First National Bank v. Steinway, 77 Fed. Rep. 661). A wife divorced from her husband living in another State may sue him for alimony in the circuit court (Barber v. Barber, 21 How. 582; see Bennett v. Bennett, Deady, 300; Fed. Cas. No. 1318). A petition for a writ of habeas corpus by a citizen of one State against a citizen of another State may be brought in the circuit court (King v. McLean Asylum, 21 U. S. App. 481; 64 Fed. Rep. 331.) An administrator, a citizen of one State, cannot sue in the circuit court of another State unless he has there taken out letters of administration. (Carters v. Treadwell,

3 Story, 25; Fed. Cas. No. 2480.) Under the act of March 3, 1887, amending the act of 1875, where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit may be brought in the district of the residence of either the plaintiff or the defendant (*Bank of Winona v. Avery*, 34 Fed. Rep. 81; and see *Fales v. Chicago etc. Railway Co.*, 32 Fed. Rep. 673; *Short v. Railroad Co.*, 33 Fed. Rep. 115; *Gavin v. Vance*, 33 Fed. Rep. 84; but compare *County of Yuba v. Pioneer Min. Co.*, 32 Fed. Rep. 183); but where only one defendant resides in the district where suit is brought, the court has no jurisdiction (*Excelsior Phosphate Co. v. Brown*, 42 U. S. App. 55; 74 Fed. Rep. 321); and if both parties are corporations, suit may be brought in the district where plaintiff is incorporated (*Fairbanks v. Cincinnati N. O. & T. P. R. Co.*, 9 U. S. App. 212; 54 Fed. Rep. 420). Where the only jurisdictional ground is diverse citizenship there must be an allegation that the matter in dispute exceeds the sum of \$2,000. (*Pliable Shoe Co. v. Bryant*, 81 Fed. Rep. 521.)

State as a party.—A State cannot be made a party in a suit in a Federal court on the ground of diverse citizenship without its consent. (*South Carolina v. Wesley*, 155 U. S. 542; *Lowenstein v. Evans*, 69 Fed. Rep. 908; *Postal Telegraph Cable Co. v. State of Alabama*, 155 U. S. 482; *State of Minnesota v. Guaranty Trust & S. D. Co.*, 73 Fed. Rep. 914; *Cobb v. Clough*, 83 Fed. Rep. 604; see ante, sec. 3, and note.)

Citizenship of parties to be shown on the record.—It is necessary to set out on the record the facts and circumstances which give jurisdiction (*Turner v. Bank*, 4 Dall. 8; *Scott v. Sanford*, 19 Howard, 393; *Godfrey v. Terry*, 97 U. S. 171; *Merserole v. Union Paper C. Co.*, 6 Blatchf. 356; Fed.

Cas. No. 9488; *Anderson v. Bell*, 2 Paine, 426; Fed. Cas. No. 2191; *Texas & Pac. Ry. Co. v. Rogers*, 13 U. S. App. 547; 57 Fed. Rep. 378; *Mexican Cent. Ry. Co. v. Pinkney*, 149 U. S. 194; *Fishback v. Western Union Tel. Co.*, 161 U. S. 91). The original petition is a part of the record and if that makes the proper averments as to citizenship of the parties, it is sufficient (*Mexican Cent. Ry. Co. v. Pinkney*, 149 U. S. 194). The summons is a part of the record, and where diverse citizenship is sufficiently alleged in the summons it is sufficient, even though the complaint be defective (*Gordon v. Third National Bank*, 144 U. S. 97). The citizenship of the parties must be stated in the bill in express terms (*Jackson v. Ashton*, 8 Peters, 148; *Dodge v. Perkins*, 4 Mason, 435; Fed. Cas. No. 3954; *Vose v. Philbrook*, 3 Story, 335; Fed. Cas. No. 17010; *Michaelson v. Dennison*, 3 Day, 294; Fed. Cas. No. 9523; *Roberts v. Lewis*, 144 U. S. 653); and if the facts are in the body of the complaint, it is sufficient. (*Mexico S. Bank v. Reed*, 7 Am. Law Rec. 650; Fed. Cas. No. 9514; see *Jones v. Andrews*, 10 Wall. 327; *Muller v. Dows*, 94 U. S. 444.) The bill need not allege the citizenship of other parties who may come in. (*Vallette v. W. V. Canal Co.*, 4 McLean, 192; Fed. Cas. No. 16820.) It is not sufficient to allege that a party is an alien; it must state of what foreign State he is a citizen or subject (*Hinckley v. Byrne*, 1 Deady, 224; Fed. Cas. No. 6510; *Wilson v. City Bank*, 3 Sum. 422; Fed. Cas. No. 17797; *Michaelson v. Denison*, 3 Day, 294; Fed. Cas. No. 9523); that the party is of a certain State is sufficient (*Wright v. Hollingsworth*, 1 Peters, 165; *Wood v. Wagnon*, 2 Cranch, 9; see *Gassies v. Ballou*, 6 Peters, 761); or city (*Jackson v. Ashton*, 8 Peters, 148); or that he is a citizen of a judicial district (*Berlin v. Jones*, 1 Woods, 638; Fed. Cas. No. 1343); or that the parties are citizens of different districts when

those districts embrace the respective States (Edwards v. Nichols, 3 Day, 16; Fed. Cas. No. 4296); for if the complaint sets out facts from which citizenship may be presumed, it is sufficient. (Marshall v. Balt. & O. R. Co., 16 How. 314; Bayerque v. Haley, 1 McAll. 97; Fed. Cas. No. 1135.) So an averment that a party has for a long time carried on business at a certain place is sufficient. (Express Co. v. Kountze, 8 Wall. 342.) If the citizenship of the parties is sufficiently averred in the first count, it may be referred to in the other counts. (Jones v. Heaton, 1 McLean, 317; Fed. Cas. No. 7468.) An allegation of the residence of the parties without an averment of citizenship is not sufficient. (Abercrombie v. Dupuis, 1 Cranch, 343; Robertson v. Cease, 97 U. S. 646; Brown v. Keene, 8 Peters, 112.) An allegation of alienage that plaintiff is a "citizen of London, England," is insufficient (Stuart v. City of Easton, 156 U. S. 46). An allegation that plaintiff is "of Chelsea in said district," is an insufficient allegation of citizenship (Horne v. George H. Hammond Co., 155 U. S. 393). In alleging diversity of citizenship it is not enough to allege that defendant is a citizen of a State other than plaintiff's, but the State of which defendant is a citizen must be specifically designated (Benjamin v. City of New Orleans, 41 U. S. App. 178; 74 Fed. Rep. 417). So an allegation that one party is an alien without alleging that the other party is a citizen is not sufficient. (Hodgson v. Bowerbank, 5 Cranch, 303; Jackson v. Twentymen, 2 Peters, 136; Piquignot v. Penn. R. R. Co., 16 How. 104.) An allegation that the citizenship of some of the parties is unknown, is not sufficient. (Speigle v. Meredith, 4 Biss. 120; Fed. Cas. No. 13227; Conwell v. White Water V. C. Co., 4 Biss. 195; Fed. Cas. No. 3148; Tug River Coal & Salt Co. v. Brigel, 31 U. S. App. 665; 67 Fed. Rep. 625.) The complaint need not contain an allegation

that defendant is an inhabitant of the district or was served with process therein (*Gracie v. Palmer*, 8 Wheaton, 699; *McCloskey v. Cobb*, 2 Bond, 16; Fed. Cas. No. 8702; *Vore v. Fowler*, 2 Bond, 294; Fed. Cas. No. 17003); or that he was a resident of a division of the district (*Merchants' Nat. Bank v. Chattanooga*, 53 Fed. Rep. 314). Acquiescence of plaintiff in an averment of citizenship in the demurrer is sufficient to sustain the jurisdiction. (*Bradstreet v. Thomas*, 12 Peters, 59; *Lafayette Ins. Co. v. French*, 18 How. 404.) A judgment rendered in a Federal court cannot be collaterally attacked, because of the insufficiency of the allegation of citizenship (*Rice v. Adler-Goldman Commission Co.*, 36 U. S. App. 266; 71 Fed. Rep. 151.) An allegation of diverse citizenship in one suit is binding upon the party who alleged it in a subsequent suit, which is merely a continuation of the former one (*Lumley v. Wabash Ry. Co.*, 71 Fed. Rep. 21). If the requisite citizenship appears on the face of the bill the jurisdiction cannot be collaterally attacked by evidence de hors the record (*Ex parte Lennon*, 166 U. S. 548). In suits upon bills of exchange and promissory notes, the complaint must aver the citizenship of the parties requisite to sustain the jurisdiction. (*Turner v. Bank*, 4 Dall. 8; *Mollan v. Torrance*, 9 Wheat. 537; *Bank v. Moss*, 6 How. 31; *Morgan v. Gay*, 19 Wall. 81; *Donaldson v. Hazen*, 1 Hemp. 423; Fed. Cas. No. 3984; *Rogers v. Linn*, 2 McLean, 126; Fed. Cas. No. 12015; *Fry v. Rousseau*, 3 McLean, 106; Fed. Cas. No. 5141; *Brainard v. Williams*, 4 McLean, 122; Fed. Cas. No. 1804; *Fletcher v. Turner*, 5 McLean, 468; Fed. Cas. No. 4867; *Brown v. Noyes*, 2 Wood. & M. 75; Fed. Cas. No. 2023; *Heckscher v. Binney*, 3 Wood. & M. 333; Fed. Cas. No. 6316; *Jones v. Shapera*, 13 U. S. App. 481; 57 Fed. Rep. 457.) An averment of "residence" is not the equivalent of an averment of citizenship for

the purpose of giving a circuit court jurisdiction over the subject matter. (*Everhart v. Huntsville College*, 120 U. S. 223; *Menard v. Goggan*, 121 U. S. 253; *Cont. Ins. Co. v. Rhodes*, 119 U. S. 237; *Halsted v. Buster*, 119 U. S. 341; and see *Johnson v. Christian*, 125 U. S. 642; *Texas & P. Ry. Co. v. Rogers*, 13 U. S. App. 547; 57 Fed. Rep. 378; *Cooper v. Newell*, 155 U. S. 532; *Hoppenstedt v. Fuller*, 36 U. S. App. 271; 71 Fed. Rep. 99; *Wolfe v. Hartford Life & Annuity Ins. Co.*, 148 U. S. 389; *Tinsley v. Hoot*, 2 U. S. App. 548; 53 Fed. Rep. 682; *Haskell v. Bailey*, 25 U. S. App. 99; 63 Fed. Rep. 873; *Southwestern Pac. Ry. Co. v. Denton*, 146 U. S. 202; *Tug River Coal & Salt Co. v. Brigel*, 31 U. S. App. 625; 67 Fed. Rep. 625.) If the plaintiff's pleading sets out the necessary diverse citizenship the burden of both allegation and proof to the contrary rests upon the party who seeks to defeat the jurisdiction. (*National Masonic Assn. v. Sparks*, 49 U. S. App. 681; 83 Fed. Rep. 225; *Foster v. Cleveland C. C. & St. L. Ry. Co.*, 56 Fed. Rep. 434.) The court may permit an amendment of complaint to show diversity of citizenship, upon motion in arrest of judgment. (*Maddox v. Thorn*, 23 U. S. App. 189; 60 Fed. Rep. 217.) A defective allegation of citizenship may be corrected on appeal by consent of both parties. In the absence of such consent the judgment may be reversed, but the verdict need not be set aside as the court below may allow an amendment in accordance with the facts. (*Fitchburg R. R. Co. v. Nichols*, U. S. App., 85 Fed. Rep. 869.) An allegation that a corporation is a citizen of a given State is not sufficient. It should be alleged that the corporation was created under the laws of the State (*Lonergan v. Illinois Cent. R. R. Co.*, 55 Fed. Rep. 550). An allegation that plaintiff is a corporation organized and domiciled in the State of New York, is sufficient (*Ward v. Blake Mfg. Co.*, 12 U. S. App.

295; 56 Fed. Rep. 437); or that it is duly organized under the laws of a State (*Dodge v. Tulleys*, 144 U. S. 451). But an allegation that defendant is a corporation, "duly established by law and having its principal place of business in Boston, Massachusetts," is not sufficient (*New York & N. E. Ry. Co. v. Hyde*, 5 U. S. App. 443; 56 Fed. Rep. 188). Where the jurisdiction depends upon diverse citizenship of corporations, defective averments in regard thereto are waived by the filing of an answer and the taking of testimony by both parties (*Kennedy v. Solar Refining Co.*, 69 Fed. Rep. 715). If diverse citizenship is the only ground of jurisdiction it must be alleged that the amount in dispute, exclusive of interest and costs, exceeds \$2,000 (*Pliable Shoe Co. v. Bryant*, 81 Fed. Rep. 521).

Diverse citizenship in ancillary proceedings.—Where the court has jurisdiction over the subject of the litigation diverse citizenship is not necessary in ancillary and dependent proceedings (*Krippendorf v. Hyde*, 110 U. S. 276; *Morgan's L. & T. R. & S. S. Co. v. Texas Cent. R. Co.*, 137 U. S. 171, 201; *Ex parte Tyler*, 149 U. S. 164; *Root v. Woolworth*, 150 U. S. 401; *Central Trust Co. of N. Y. v. Bridges*, 16 U. S. App. 115; 57 Fed. Rep. 753; *Broadis v. Broadis*, 86 Fed. Rep. 951; *Blake v. Pine Mountain Iron & C. Co.*, 43 U. S. App. 490; 76 Fed. Rep. 624; *Carey v. Houston & T. C. Ry. Co.*, 52 Fed. Rep. 671; *Peck v. Elliott*, 47 U. S. App. 605; 79 Fed. Rep. 10; *Fish v. Ogdensburgh & L. C. R. Co.*, 79 Fed. Rep. 131; *McDonald v. Seligman*, 81 Fed. Rep. 48; *Bradshaw v. Miner's Bank*, U. S. App., 81 Fed. Rep. 902; *White v. Ewing*, 159 U. S. 36; *Carey v. Houston & Texas Cent. Ry. Co.*, 11 U. S. 115; *People's Sav. Inst. v. Miles*, 76 Fed. Rep. 252; *Carpenter v. N. P. R. R. Co.*, 75 Fed. Rep. 850). And for this purpose scire facias to revive a judgment is an ancillary

proceeding (*Wonderly v. Lafayette County*, 77 Fed. Rep. 665); as is a bill to enjoin a creditor's bill (*Bradshaw v. Miner's Bank*, 53 U. S. App. 399; 81 Fed. Rep. 902); and a mortgage foreclosure suit when the property is already in the hands of the court's receiver (*Continental Trust Co. v. Toledo St. L. & K. Co.*, 82 Fed. Rep. 642); and a suit brought by a receiver appointed by a federal court against the subscribers to the stock of a corporation to collect balance of subscription (*Bausman v. Denny*, 73 Fed. Rep. 69); but in a merely personal action where no fund has come into the court's possession the court cannot take jurisdiction. (*Seligman v. City of Santa Rosa*, 81 Fed. Rep. 524.)

Parties, joinder of.—The words "of the State where the suit is brought," and "a citizen of another State," confine suits to those which are between citizens of different States (*Louisville R. R. Co. v. Letson*, 2 How. 497); the intention being that if there are several plaintiffs, each must be competent to sue, and each of several defendants be competent to be sued. (*Coal Co. v. Blatchford*, 11 Wall. 172; *Adams v. Board*, 1 McCahon, 235; *Anderson v. Jackson*, 2 Paine, 426; Fed. Cas. No. 357; *Consol. Water Co. v. Babcock*, 76 Fed. Rep. 243; *Hoe v. Jamieson*, 166 U. S. 395.) A citizen of the State where suit is brought cannot unite with a citizen of another State against a nonresident (*Moffat v. Soley*, 2 Paine, 103; Fed. Cas. No. 9688); nor can he sue other citizens of the same State together with a citizen of another State. (*Strawbridge v. Curtis*, 3 Cranch, 267; *Ketchum v. Farmers' L. & T. Co.*, 4 McLean, 1; Fed. Cas. No. 7736; *Cross v. Del Valle*, 1 Wall. 1; *Searles v. J. P. & M. R. R. Co.*, 2 Woods, 621; Fed. Cas. No. 12586; *Lockhart v. Horn*, 1 Woods, 628; Fed. Cas. No. 8445); but in a case of a suit against a firm for breach of a firm contract

the resident defendant may be dismissed without prejudice and the suit be allowed to proceed against the nonresident defendant. (*Smith v. Consumer's Cotton Oil Co.*, U. S. App., 86 Fed. Rep. 359.) So if some of the plaintiffs are citizens of the State where suit is brought and some are not, the defendant resides in the State, jurisdiction does not attach (*Bissel v. Horton*, 3 Day, 281; Fed. Cas. No. 1448); but a citizen of one State may sue an alien and a citizen of the State where suit is brought (*Hinckley v. Byrne*, 1 Deady, 224; Fed. Cas. No. 6510); and if aliens sue citizens of two States, uniting with themselves a citizen of a different State, the latter may be stricken out before decree. (*Connolly v. Taylor*, 2 Peters, 556.) If any of the necessary parties defendant are citizens of the same State with any of the complainants the controversy is not wholly between citizens of different States. (*Tug River Coal & Salt Co. v. Brigel*, 31 U. S. App. 665; 67 Fed. Rep. 625.) If a citizen of another State is sued jointly with a citizen of the State where suit is brought, by a citizen of another State, he may object to the jurisdiction. (*Kitchen v. Strawbridge*, 4 Wash. C. C. 84; Fed. Cas. No. 7854; *Wilson v. Hurst*, Peters C. C. 441; Fed. Cas. No. 17809; *Tuckerman v. Bigelow*, 21 Law Rep. 208; Fed. Cas. No. 14228.) In case the joinder of persons who reside out of the district with persons who reside in the district as defendants, the latter cannot move to dismiss the suit on the ground of want of diverse citizenship, and the nonresident defendants can only move to dismiss as to themselves. (*Smith v. Atchison T. & S. Fe R. Co.*, 4 Fed. Rep. 1; but see *Excelsior P. Co. v. Brown*, 42 U. S. App. 55; 74 Fed. Rep. 321.) If a nonresident citizen sues a citizen of the State jointly with a citizen of another State, and the writ as to the latter is returned non est, jurisdiction as to the other defendant attaches. (*Craig v. Cummins*, Peters C. C. 431; Fed.

Cas. No. 12828.) A stockholder may file a bill against a corporation incorporated under the laws of another State, and a citizen of that State, to restrain a lawful act when the corporation refuses to enter the suit. (Dodge v. Woolsey, 18 How. 331; Minot v. P. W. & B. R. R. Co., 2 Abb. U. S. 323; Fed. Cas. No. 9645; Piek v. Chicago & N. W. R. Co., 6 Biss. 177; Fed. Cas. No. 11138; Paine v. Wright, 2 McLean, 395; Fed. Cas. No. 10676; Newby v. Oregon C. R. R. Co., 1 Sawy. 63; Fed. Cas. No. 10145; Pond v. Vt. Val. R. R. Co., 12 Blatchf. 280; Fed. Cas. No. 11265.) So the nonresident holders of bonds secured by a mortgage may sue the trustees and resident bond holders, if the latter refuse to unite in the foreclosure of the mortgage. (Hotel Co. v. Wade, 97 U. S. 13; First Nat. Bank v. Radford, 47 U. S. App. 692; 80 Fed. Rep. 569.) Jurisdiction is not ousted by the mere joinder or nonjoinder of formal parties (Boon v. Chiles, 8 Peters, 532; Rateau v. Bernard, 3 Blatchf. 244; Fed. Cas. No. 11579; Wilson v. Oswego Township, 151 U. S. 56; Phinizy v. Augusta & K. R. R. Co., 56 Fed. Rep. 273; New Chester Water Co. v. Holly Mfg. Co., 3 U. S. App. 264; 53 Fed. Rep. 19), but where the resident defendant files a disclaimer, but is not dismissed from the suit, the whole case should be dismissed. (Wetherby v. Stinson, 18 U. S. App. 714; 62 Fed. Rep. 173.) So a party may sue some of the joint obligors on a bond, without joining other citizens of a different State (Clearwater v. Meredith, 21 How. 489); but an action cannot be brought by one of several joint obligees. (Farni v. Tesson, 1 Black, 309.) The circuit court has jurisdiction of a suit by a married woman and her children, although her husband be a joint defendant, if no decree is sought against him. (Wormley v. Wormley, 8 Wheat. 421.) It is the duty of the circuit court to dismiss the suit if the parties thereto

have been improperly or collusively made or joined for the purpose of creating a case of which that court would have cognizance (*Hawes v. Contra Costa Water Co.*, "*Hawes v. Oakland*," 104 U. S. 450; *Hayden v. Manning*, 106 U. S. 586); and an injunction will lie to prevent execution of the decree. (*Broadis v. Broadis*, 86 Fed. Rep. 951.) Persons who, if within the jurisdiction, might be regarded, in a suit in equity as proper or necessary parties, will not, when beyond the jurisdiction be regarded as indispensable parties, if the rights of the parties before the court can be determined without them (*Union Mill & Min. Co. v. Dangberg*, 81 Fed. Rep. 73); and if such persons be joined in the action, their names may be stricken out. (*Tug River Coal & Salt Co. v. Brigel*, U. S. App., 86 Fed. Rep. 818; *Mason v. Dullaghan*, 82 Fed. Rep. 689; *Hicklin v. Marco*, 15 U. S. App. 55; 56 Fed. Rep. 549.) But if the rights of the parties present cannot be adjudicated without prejudicing the rights of the absentees, the court cannot make a decree. (*Collins Mfg. Co. v. Ferguson*, 54 Fed. Rep. 721.)

Interest of parties.—Where citizenship gives jurisdiction, the citizenship of the party having the legal right alone may be considered (*Bonaffee v. Williams*, 3 Howard, 574; but see *Reinach v. Atlantic & G. W. Ry. Co.*, 58 Fed. Rep. 33); as of trustees (*Browne v. Browne*, 1 Wash. C. C. 429; Fed. Cas. No. 2035; *Coal Co. v. Blatchford*, 11 Wall. 172; *Morris v. Lindauer*, 6 U. S. App. 510; 54 Fed. Rep. 23; *Shipp v. Williams*, 22 U. S. App. 380; 62 Fed. Rep. 4; *Griswold v. Bacheller*, 75 Fed. Rep. 470; *Dodge v. Tulleys*, 144 U. S. 451; *Pennington v. Smith*, 45 U. S. App. 409; 78 Fed. Rep. 399; *Rust v. Brittle Silver Co.*, 19 U. S. App. 237; 58 Fed. Rep. 611), or executors (*Dodge v. Perkins*, 4 Mason, 435; Fed. Cas. No. 3954; *Rice v. Houston*, 13 Wall. 66), or administrators (*Walker v. Beal*,

3 Cliff. 155; Fed. Cas. No. 17065; *McCarty v. New York L. E. & W. R. Co.*, 62 Fed. Rep. 437; *Bangs v. Loveridge*, 60 Fed. Rep. 963), or a principal upon a bond to an agent as obligee (*Weed S. M. Co. v. Weeks*, 3 Dill. 261; Fed. Cas. No. 17348), or of assured on a policy taken out in name of his agent (*Ruan v. Gardner*, 1 Wash. C. C. 145; Fed. Cas. 12100), or of an infant without regard to the citizenship of the *prochein amy*. (*Williams v. Ritchey*, 3 Dill. 406; Fed. Cas. No. 17734; *Blumenthal v. Craig*, 55 U. S. App. 8; 81 Fed. Rep. 320; *Voss v. Neineber*, 68 Fed. Rep. 947.) A foreign administrator cannot sue in a federal court for the wrongful death of his decedent when the State laws have given him no capacity to maintain such a suit in the State courts. (*Maysville Sr. R. R. Co. v. Marvin*, 16 U. S. App. 236; 59 Fed. Rep. 91.) When it is clearly seen that a State is an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought, it will refuse to take jurisdiction. (*Cunningham v. Macon etc. R. R. Co.*, 109 U. S. 446; *Hagood v. Southern*, 117 U. S. 52.) But when the State is merely a formal party, its presence cannot oust the jurisdiction of the court. (*State of Missouri v. Bowles Milling Co.*, 80 Fed. Rep. 161.)

Arrangement of parties according to their real interests:—Diverse citizenship to sustain federal jurisdiction must be such that all parties on one side of the controversy are citizens of different States from all those on the other side; and in determining the question of jurisdiction, the parties are to be arranged on the one side or the other as their interest requires. (*Consolidated Water Co. v. Babcock*, 76 Fed. Rep. 243; *Board of Trustees of Oberlin v. Blair*, 70 Fed. Rep. 414; *Perin v. Megibben*, 6 U. S. App. 348; 53 Fed. Rep. 86; *Cilley v. Patten*, 62 Fed. Rep. 498.)

Cross-bill.—A cross-bill cannot bring in new parties and thereby evade the law. (*Carneal v. Banks*, 10 Wheat. 181; *Shields v. Barrow*, 17 How. 130.) When defendant finds it necessary he may file a cross-bill, although the parties defendant to such bill are citizens of the same State with himself. (*Schenck v. Peay*, 1 Woodw. 175; Fed. Cas. No. 12450.) If defendants are all citizens of the same State, one of them cannot file a cross-bill against the other where complainants have no interest. (*Putnam v. New Albany*, 4 Biss. 365; Fed. Cas. No. 11481.) The assignee of a judgment may file a cross-bill to a creditor's bill, to have the judgment declared a valid lien, although he and the creditors are citizens of the same State. (*Railroad Co. v. Chamberlain*, 6 Wall. 748.) An original bill and a cross-bill thereto constitute but one cause, and when a circuit court has jurisdiction of the former by reason of the citizenship of the parties thereto, it has jurisdiction of the latter without reference to such citizenship. (*First Nat. Bank v. Salem Capital Flour Mills Co.*, Cir. Ct. Or., 31 Fed. Rep. 580. See, however, *Vannerson v. Leverett*, 31 Fed. Rep. 376.)

Effect of want of jurisdiction.—If the court has not legal cognizance, on account of citizenship of the parties of the cause, it ought not to proceed to a decision (*Ketland v. The Cassius*, 2 Dall. 365); and admission of service of process will not confer jurisdiction (*Petrocokino v. Stuart*, 37 Leg. Int. 30); nor will the appearance of the party confer jurisdiction. (*Kitchen v. Strawbridge*, 4 Wash. C. C. 84; Fed. Cas. No. 7854; *Commercial & R. Bank v. Slocum*, 14 Peters, 60; *Decker v. N. Y. B. & P. Co.*, 11 Blatchf. 76; Fed. Cas. No. 3727; *Southern Pac. Co. v. Denton*, 146 U. S. 202.) If the record on its face shows a want of jurisdiction, advantage may be taken of the defect by motion at any stage of the proceedings

(*Coal Co. v. Blatchford*, 11 Wall. 172; *The Cassius*, 2 Dall. 365; *Municipal Inv. Co. v. Gardiner*, 62 Fed. Rep. 954; *Blythe v. Hinckley*, 84 Fed. Rep. 246); or the objection may be taken by demurrer. (*Speigle v. Meredith*, 4 Biss. 120; Fed. Cas. No. 13227; *Coal Co. v. Blatchford*, 11 Wall. 172; *Donaldsen v. Hazen*, Hemp. 423; Fed. Cas. No. 3984; *Southern Pac. Co. v. Denton*, 146 U. S. 202.) If the record on its face shows that the circuit court has no jurisdiction, judgment will, on motion, be stricken out (*Shuford v. Cain*, 1 Abb. U. S. 302; Fed. Cas. No. 12823); or it may be arrested (*Shedder v. Custis*, 1 Hughes, 246; Fed. Cas. No. 12736); or it may be reversed on a bill of review (*Ketchum v. Farmers' L. & T. Co.*, 4 McLean, 1; Fed. Cas. No. 7736); and no costs will be allowed (*Hornthal v. Collector*, 9 Wall. 560); but a judgment cannot be stricken out on motion after the term. (*Cameron v. McRoberts*, 3 Wheat. 591; *United States Bank v. Moss*, 6 How. 31.) The circuit court may set aside orders improperly made before discovery of want of jurisdiction (*Mail Co. v. Flanders*, 12 Wall. 130), as an interlocutory judgment on an account (*Kitchen v. Strawbridge*, 4 Wash. C. C. 84; Fed. Cas. No. 7854); or may protect bona fide purchasers of receiver's certificates issued under order of court during the suit. (*Electrical Supply Co. v. Put-in-Bay Waterworks Co.*, 84 Fed. Rep. 740.) After the trial and verdict for plaintiff, the cause will not be dismissed on the ground of citizenship if the declaration contains the necessary averment (*Bobyshall v. Oppenheimer*, 4 Wash. C. C. 482; Fed. Cas. No. 1592); and in such a case the objection cannot be raised in a subsequent suit. (*Lacassaque v. Chapias*, 144 U. S. 119.) Where the circuit court is without jurisdiction, on reversal in the supreme court, costs are to be borne by appellant. (*Tennessee v. Union & Planter's Bank*, 152 U. S. 454; *Horne v. George H. Hammond Co.*, 155 U. S. 393.)

Objections to jurisdiction.—Where the want of jurisdiction is apparent on the face of the petition, it may be taken advantage of by demurrer, and no plea in abatement is necessary. (*Southern Pac. Co. v. Denton*, 146 U. S. 202.) The citizenship of the parties is not part of the issue, but must be brought forward by plea in abatement (*D'Wolf v. Rabaud*, 1 Peters, 476; *Evans v. Gee*, 11 Peters, 80; *Van Antwerp v. Hulburd*, 7 Blatchf. 426; *Fed. Cas. No. 16826*; *Evans v. Davenport*, 4 McLean, 574; *Fed. Cas. No. 4558*), as the denial of the citizenship of the plaintiff. (*Wickliffe v. Owings*, 17 How. 47; *Dodge v. Perkins*, 4 Mason, 435; *Fed. Cas. No. 3954*; *Wood v. Mann*, 1 Sum. 578; *Fed. Cas. No. 17952*; *Vose v. Reed*, 1 Woods, 647; *Fed. Cas. No. 17011*; *Nesmith v. Calvert*, 1 Wood. & M. 34; *Fed. Cas. No. 10123*.) The objection cannot be raised on the general issue (*Smith v. Kernochan*, 7 How. 198; *Wood v. Mann*, 1 Sum. 578; *Fed. Cas. No. 17952*; *Gause v. Clarkville*, 1 McCrary, 78; *National Masonic Association v. Sparks*, 49 U. S. App. 681; 83 Fed. Rep. 225); nor can the plea in abatement be filed simultaneously with a plea to the merits. (*Evans v. Davenport*, 4 McLean, 574; *Fed. Cas. No. 4558*; *Wythe v. Myers*, 3 Sawy. 595; *Fed. Cas. No. 18119*.) A plea that a party is resident of a State (*Evans v. Davenport*, 4 McLean, 574; *Fed. Cas. No. 4558*; *Codwise v. Gleason*, 3 Day, 3; *Fed. Cas. No. 2938*), or that he does not show citizenship at the time of bringing the action is not sufficient. (*Mollan v. Torrence*, 9 Wheat. 537.) A plea to the jurisdiction on the ground that one of the defendants is a citizen of the same State as plaintiff is good. (*Massachusetts & Southern Const. Co. v. Cane Creek Twp.*, 155 U. S. 283.) If a party pleads in abatement by attorney, he may withdraw the plea and rely on a motion. (*Halsey v. Hurd*, 6 McLean, 14 Fed. Cas. No. 5966; *Van Antwerp v. Hul-*

burd, 7 Blatchf. 426; Fed. Cas. No. 16826.) The right of the defendant to object on ground of citizenship is a personal right which cannot be exercised by his codefendants (*Harrison v. Urann*, 1 Story, 64; Fed. Cas. No. 6146; *Hineckley v. Byrne*, Deady, 224; Fed. Cas. No. 6510); but a codefendant may voluntarily appear and unite in a plea to the jurisdiction. (*Lovejoy v. Washburn*, 1 Biss. 416; Fed. Cas. No. 8550.) The objection that parties have not the requisite citizenship cannot be taken after mandate from the supreme court (*Wythe v. Gibbes*, 20 How. 541); nor can it be raised on affidavits on motion for an injunction. (*Rateau v. Berrard*, 3 Blatchf. 244; Fed. Cas. No. 11579.) When apparent jurisdiction is shown the objection must be taken by plea (*Pond v. Vt. Val. R. R. Co.*, 12 Blatchf. 280; Fed. Cas. No. 11265), and an answer cannot be withdrawn for the purpose of filing the plea. (*Vose v. Reed*, 1 Woods, 647; Fed. Cas. No. 17011.) A special appearance for the purpose of objecting to the jurisdiction becomes general if the defendant then disputes the merits of the cause. (*Crawford v. Foster*, 56 U. S. App. 231; 84 Fed. Rep. 939.) A defendant who was not served with process does not, by joining with one who was served in a motion to set aside service, submit himself to the jurisdiction of the court. (*Beck & P. L. Co. v. Wacker & B. B. Co.*, 46 U. S. App. 486; 76 Fed. Rep. 10.) It is never too late to consider the question of jurisdiction in the courts of the United States, and if at any time the want of jurisdiction should appear, it is the duty of the court to dismiss the case (*Van- nerson v. Leverett*, 31 Fed. Rep. 376; *United States v. North Bloomfield Gold Mining Company*, 53 Fed. Rep. 625); but without prejudice (*Plant Inv. Co. v. Jacksonville T. & R. W. R. Co.*, 152 U. S. 71.) It is the duty of the federal appellate court to take notice of its own motion that the record does not show juris-

diction in the court below, and thereupon to remand the cause. (*Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App. 45; 59 Fed. Rep. 727; *Snead v. Sellers*, 30 U. S. App. 8; 66 Fed. Rep. 371; *St. Louis I. M. & S. Ry. Co. v. Newcom*, 12 U. S. App. 503; 56 Fed. Rep. 951; *Horne v. George H. Hammond Co.*, 155 U. S. 393.) An objection to the court's jurisdiction to appoint a receiver for property other than that upon which the complaining creditors claim a lien should be taken in limine, and is waived when not raised until after a decree authorizing the receiver to sell all the property. (*Temple v. Glasgow*, 42 U. S. App. 417; 80 Fed. Rep. 441.)

§ 85. **Citizens claiming land under different State grants.**—Foreign citizens, etc., or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid. (Act of March 3, 1875, Rev. Stats. sec. 629, clause 2, as amended March 3, 1887, and corrected August 13, 1888; 25 U. S. Stats. 433.)

When an alien is a party.—Under the first clause of section two, article three of the constitution of the United States, jurisdiction is given to federal courts in cases where a foreign State or individual is a party. (*Chappedelaine v. Dechenaux*, 4 Cranch, 308; *Browne v. Strode*, 5 Cranch, 303.) So it extends to all cases affecting ambassadors, although they are not parties to the record (*Osborn v. Bank*, 9 Wheat. 738; *U. S. v. Ortega*, 11 Wheat. 467; *U. S. v. Ravara*, 2 Dall. 297); but the fact that a consul of a foreign nation is a party to a suit does not give the circuit

court jurisdiction. (*Pooley v. Luco*, 72 Fed. Rep. 561.) A citizen of the State may sue an alien in the federal courts, although the alien be a foreign consul. (*St. Luke's Hospital v. Barclay*, 3 Blatchf. 259; Fed. Cas. No. 12241; *Graham v. Stucken*, 4 Blatchf. 50; Fed. Cas. No. 5677.) The controversy must be one in which a citizen of the State and an alien are parties (*Hepburn v. Ellzey*, 2 Cranch, 445; *Mossman v. Higginson*, 4 Dall. 12; *New Orleans v. Winter*, 1 Wheat. 91; *Jackson v. Twentyman*, 2 Peters, 136; *Hodgson v. Bowerbank*, 5 Cranch, 303; *Gassies v. Ballou*, 6 Peters, 761; *Brown v. Keene*, 8 Peters, 112; *Picquet v. Swan*, 4 Mason, 443; Fed. Cas. No. 11133; 5 Mason, 35; Fed. Cas. No. 11134; *Case v. Clark*, 5 Mason, 70; Fed. Cas. No. 2490; *Catlett v. Pac. Ins. Co.*, 1 Paine, 594; Fed. Cas. No. 2517; *Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Prentiss v. Brennan*, 2 Blatchf. 162; Fed. Cas. No. 11385; *Wilson v. City Bank*, 5 Bank. Reg. 270), or a nominal citizen suing for the use of an alien (*Browne v. Strode*, 5 Cranch, 303); and one party, either plaintiff or defendant, must be a citizen (*Jackson v. Twentyman*, 2 Peters, 136; *Baird v. Byrne*, 3 Wall. Jr. 1; Fed. Cas. No. 757; *Prentiss v. Brennan*, 2 Blatchf. 162; Fed. Cas. No. 11385; *Rateau v. Bernard*, 3 Blatchf. 244; Fed. Cas. No. 11579), as the circuit court has no jurisdiction of a controversy between aliens. (*Dunn v. The Young America*, 37 Leg. Int. 30; Fed. Cas. No. 4178; *Pooley v. Luco*, 72 Fed. Rep. 561.) A woman who marries a British subject domiciled in Canada becomes a citizen of Canada under the statute of that country, and is, therefore, an alien with respect to the United States. (*Jenns v. Landes*, 85 Fed. Rep. 801.) The court will take notice of the fact that Canadian citizens are "citizens and subjects of a foreign State." (*Lumley v. Wabash Ry. Co.*, 71 Fed. Rep. 21; but see, contra, *Rondot v. Town-*

ship of Rogers, 47 U. S. App. 290; 79 Fed. Rep. 676.) For the purpose of jurisdiction, a foreign corporation is deemed an alien (Soc. for Prop. Gosp. v. New Haven, 8 Wheat. 464); so of resident unnaturalized foreigners (Baird v. Byrne, 3 Wall. Jr. 1; Fed. Cas. No. 757); and one who has merely filed his declaration of intention to become a citizen is an alien (Baird v. Byrne, 3 Wall. Jr. 1; Fed. Cas. No. 757); but an Indian tribe is not a foreign nation (Cherokee Nation v. Georgia, 5 Peters, 1; Worcester v. Georgia, 6 Peters, 515); nor is an Indian a foreign citizen or subject. (Karahoo v. Adams, 1 Dill. 344; Fed. Cas. No. 7614.) A foreign sovereign may sue a citizen in the United States courts (King v. Oliver, 2 Wash. C. C. 429; Fed. Cas. No. 7814); and a resident alien may sue a citizen (Breedlove v. Nicolet, 7 Peters, 413; Bonaparte v. Camden & A. R. R. Co., Bald. 205; Fed. Cas. No. 1617), although he sues as trustee, (Chappeldelaine v. Dechenaux, 4 Cranch, 306.) So an executor and residuary legatee may sue in the federal courts, though both are aliens. (Chappedelaine v. Dechenaux, 4 Cranch, 306.) And if an alien holds lands he may sue a citizen for any matter affecting his rights. (Bonaparte v. Camden & A. R. R. Co., Bald. 205; Fed. Cas. No. 1617.) An alien may sue citizens of the United States in the federal courts to enjoin a conspiracy to prevent the loading or unloading of complainant's ship. (Elder v. Whitesides, 72 Fed. Rep. 724.) A suit to foreclose, brought by an alien mortgage bond holder in his own right is maintainable in the federal circuit court, although the trustee under the mortgage, who holds the legal title, is a citizen of the same State with some of the defendants; such trustee being joined as defendant. (Reinach v. Atlantic & G. W. Ry. Co., 58 Fed. Rep. 33.) The fact that a citizen of the United States has become permanently domiciled in Canada and

intends to become naturalized there, does not make him an alien. (*Bishop v. Averill*, 76 Fed. Rep. 386.)

§ 85 a. **Jurisdiction in cases growing out of bankruptcy proceedings.**—(a) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

(c) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act. (30 U. S. Stats. 552, 553, act of 1898.)

§ 86. **Exclusive cognizance of crimes.**—Circuit courts shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable *by them*. But no person shall be arrested in one dis-

trict for trial in another in any civil action before a circuit or district court. (Rev. Stats. sec. 629, clause 3; 25 U. S. Stats. 433.)

Jurisdiction in criminal cases.—The circuit court has jurisdiction over criminal offenses (U. S. v. Holiday, 3 Wall. 407) after Congress has defined the crime and conferred the jurisdiction. (U. S. v. Hall, 98 U. S. 343; U. S. v. Mann, 1 Gall. 3; Fed. Cas. No. 15717; U. S. v. Hudson, 7 Cranch, 32; U. S. v. Coolidge, 1 Wheat. 415.) The jurisdiction is limited to crimes committed within the district (U. S. v. Jackalow, 1 Black. 484; U. S. v. Alberty, Hemp. 444; Fed. Cas. No. 14426; U. S. v. Britton, 2 Mason, 464; Fed. Cas. No. 14650; U. S. v. Wood, 2 Wheel. C. C. 325; U. S. v. Bickford, 4 Blatchf. 337; Fed. Cas. No. 14591), in any place under the exclusive authority of the United States. (U. S. v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.) The jurisdiction relates to the prosecution against persons, and not to information in rem (*Ketland v. The Cassius*, 2 Dall. 365); to the trial, and not to the creation of the crime. (U. S. v. New Bedford Bridge, 1 Wood. & M. 401; Fed. Cas. No. 15867.) It has no original jurisdiction over a *qui tam* action. (*Evans v. Bollen*, 4 Dall. 341.) It has jurisdiction over a crime committed by a foreign consul. (U. S. v. Ravara, 2 Dall. 297.) It has jurisdiction to try the question whether an offense has been committed. (U. S. v. Reese, 4 Sawy. 629; Fed. Cas. No. 16138.) United States courts have no jurisdiction over offenses at common law. (*Ex parte Bollman*, 4 Cranch, 75; *Turner v. Bank of N. A.*, 4 Dall. 10; U. S. v. Lancaster, 2 McLean, 431; Fed. Cas. No. 15556; *Kitchen v. Strawbridge*, 4 Wash. C. C. 84; Fed. Cas. No. 7854; U. S. v. New Bedford Bridge, 1 Wood. & M. 401; Fed. Cas. No. 15867.) A United States court has exclusive jurisdiction of

offenses committed in places in California purchased by the United States, with the consent of the State legislature, for the erection of a custom house and other necessary public buildings, and so used. (*Sharon v. Hill*, Cir. Ct. Cal., 24 Fed. Rep. 723.) It has no jurisdiction to try an offense committed upon the Crow Reservation in Montana. (*Draper v. United States*, 164 U. S. 240.) A circuit court has jurisdiction of a homicide committed by one soldier upon another within a military reservation of the United States. (*United States v. Clark*, Cir. Ct. Mich., 31 Fed. Rep. 710. But compare *United States v. Bateman*, 34 Fed. Rep. 86.) The circuit court has no original jurisdiction of proceedings for penalties and forfeitures under the laws of the United States. (*Ketland v. The Cassius*, 2 Dall. 365.) A circuit court can only interfere with the prosecution of crimes in State courts so far as Congress has authorized the removal of a prosecution into that court or a discharge of the prisoner by habeas corpus. (*Commonwealth of Virginia v. Paul*, 148 U. S. 107.)

§ 86 a. Injunction proceedings to restrain infringement of copyrights.—The circuit courts or judges thereof shall have jurisdiction to enforce said injunction [restraining the unauthorized performance or representation of any dramatic or musical composition for which copyright has been obtained], and to hear and determine a motion to dissolve the same, as herein provided as fully as if the action were pending or brought in the circuit in which said motion is made. (29 U. S. Stats. 482.)

§ 86 b. Suits to determine right to Indian allotments.—That all persons who are in whole or in

part of Indian blood or descent, who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act, or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any act of Congress, may commence and prosecute or defend any action, suit or proceeding in relation to their right thereto, in the proper circuit court of the United States. And said circuit courts are hereby given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions, involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency; *provided*, that the right of appeal shall be allowed to either party as in other cases. (28 U. S. Stats. 305.)

§ 86 c. Suits for partition of land where United States is a party.—That the several circuit courts of the United States shall have jurisdiction of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases

where the United States is one of such tenants in common or joint tenants, such suit to be brought in the circuit court of the district in which such land is situate. (30 U. S. Stats. 416, sec. 1.)

§ 87. Suits, in what district brought.—No civil suit shall be brought before either of said courts against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. (Rev. Stats. sec. 629, clause 4; 25 U. S. Stats. 433. See ch. 2, Creation of Judicial Districts.)

See notes to sections 25 and 26, ante.

Note.—The provision of the act of 1887 differs from the corresponding provision of the act of 1875 in two particulars only: 1st. In the clerical mistake, "process of proceeding" for "process or proceeding," which has been set right by the act of 1888, correcting the enrollment of the act of 1887. (Act of August 13, 1888, chap. 860, sec. 1, 25 Stats. 433.) 2nd. In striking out the last clause, permitting civil suits to be brought in the district in which the defendant is found at the time of service, and thus confining them to the district of which he is an inhabitant. This change, far from weakening the reason of the decision (in *Atkins v. Disintegrating Co.*, 18 Wall. 272), greatly strengthens it. (In *re Louisville Underwriters*, 134 U. S. 488.) Under section 1 of the act of 1875, as amended in 1887 and 1888, a circuit court has not jurisdiction of a suit by two plaintiffs, one

of whom is a resident of the district in which suit is brought and one a resident of another State, against a defendant who is a resident of another State. All the plaintiffs must be residents of the district in which suit is brought in order that it may be maintained. (*Smith v. Lyon*, 133 U. S. 315; same case in lower court, *Smith v. Lyon*, 38 Fed. Rep. 53.) And all the defendants must be citizens of the State and district where the court sits, in order to give the court where suit is brought jurisdiction. (*Excelsior Phosphate Co. v. Brown*, 42 U. S. App. 55; 74 Fed. Rep. 321.) When jurisdiction depends on the existence of a federal question, defendant must be sued in the district of his domicile; but when jurisdiction depends upon the citizenship of the parties, the suit may be brought in the district in which either party resides. (*St. Louis etc. R. Co. v. Terre Haute etc. R. Co.*, 33 Fed. Rep. 385; *Halstead v. Manning*, 34 Fed. Rep. 565; *Vinal v. Continental Co.*, 34 Fed. Rep. 228.) The provision in this section applies to suits in equity under Rev. Stats., sec. 4915, to procure the issuance of letters patent for an invention, after rejection of the application therefor. (*Butterworth v. Hill*, 114 U. S. 128.) The circuit court of one State has no jurisdiction beyond the limits of the State. (*Boyce v. Grundy*, 9 Peters, 275; *Mississippi & M. R. R. Co. v. Ward*, 2 Black, 485; *Northern Ind. R. Co. v. Mich. Cent. R. Co.*, 15 How. 233.) An action may be maintained in the circuit court of any district in which the defendant may be found, for a trespass committed by an army officer out of the United States against a citizen. (*Mitchell v. Harmony*, 13 How. 115.) If a suit be one to enforce a claim to land, it may be brought in the district where the land is situated, though neither party reside there. (*Single v. Scott Paper Mfg. Co.*, 55 Fed. Rep. 553.) Under the act of 1887, where the jurisdiction of the circuit

court is founded upon any of the causes mentioned in this section, except the citizenship of the parties, suit must be brought in the district of which the defendant is an inhabitant. But where the jurisdiction is founded solely upon the fact that the parties are citizens of different States, the suit may be brought in the district in which either the plaintiff or the defendant resides. (McCormick Harvesting Mach. Co. v. Walthers, 134 U. S. 41.) In a case where the suit is between corporations and the jurisdiction depends solely upon diverse citizenship, suit may be brought in the district of plaintiff's incorporation. (Fairbanks v. Cincinnati etc. R. R. Co., 9 U. S. App. 212; 54 Fed. Rep. 420.) The right to have suit brought only in the district of inhabitancy of defendant is a personal privilege which may be waived. (St. Louis etc. R. Co. v. McBride, 141 U. S. 127; *Ex parte Schollenberger*, 96 U. S. 369; *McBride v. Grand de Tour Plough Co.*, 40 Fed. Rep. 162; *Walker v. Windsor Nat. Bank*, 5 U. S. App. 423; 56 Fed. Rep. 76; *Smith v. Atchison T. & S. F. R. R. Co.*, 64 Fed. Rep. 1.) And the same rule applies where the jurisdiction depends upon diverse citizenship, and the action is brought in a district where neither plaintiff or defendant reside. (*Hoover & Allen Co. v. Columbia Straw Paper Co.*, 68 Fed. Rep. 945; but see *contra*, *Central Trust Co. of N. Y. v. Virginia T. & C. Steel Co.*, 55 Fed. Rep. 769.)

Territorial limit of jurisdiction.—A court created within and for a particular Territory is bounded in the exercise of its power by the limits of such Territory. (*Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134; *Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. No. 5657.) Whatever may be the extent of the jurisdiction over the subject matter in a suit, in respect to jurisdiction over persons and property, it

can only be exercised within the limits of the judicial district. (*Toland v. Sprague*, 12 Peters, 300; *Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134.) The circuit court has jurisdiction only over the inhabitants of the district, or persons found therein, and served with process. (*Pollard v. Dwight*, 4 Cranch, 424; *Anderson v. Shaffer*, 10 Fed. Rep. 266.) So where a citizen of New Hampshire and a citizen of Georgia sued a citizen of Massachusetts in New York, where he was arrested, the court had no jurisdiction (*Moffat v. Soley*, 2 Paine, 103; Fed. Cas. No. 9688); but where there are two districts in a State, a citizen of such State is liable to suit in either district, if served with process. (*McMicken v. Webb*, 11 Peters, 25; *Vore v. Fowler*, 2 Bond, 294; Fed. Cas. No. 17003; *Locomotive Co. v. Erie Ry. Co.*, 10 Blatchf. 292; Fed. Cas. No. 8452.)

Local actions.—Suits which concern realty cannot be maintained unless the land lies within the district (*Northern Ind. R. R. Co. v. Mich. Cent. R. R. Co.*, 15 How. 233; *Livingston v. Jefferson*, 1 Brock. 203; Fed. Cas. No. 8411; *Picquet v. Swan*, 5 Mason, 35; Fed. Cas. No. 11134; *Ex parte Graham*, 3 Wash. C. C. 456; Fed. Cas. No. 5657); as a bill to abate a nuisance (*Mississippi & Mo. R. R. Co. v. Ward*, 2 Black, 485); or to grant relief for an injury threatened to real estate (*Northern Ind. R. R. Co. v. Mich. Cent. R. R. Co.*, 15 How. 233); nor to decree a sale of lands in another State by a master acting under its authority (*Boyce v. Grundy*, 9 Peters, 275; *Watts v. Waddle*, 1 McLean, 200; Fed. Cas. No. 17295; see *Lyman v. Lyman*, 2 Paine, 11; Fed. Cas. No. 8628); but it may pass a decree enforcing a lien and require its payment, though the land is in another State. (*Lewis v. Darling*, 16 How. 1; *King v. T. D. & C. R. R. Co.*, 7 Pa. L. J. 166; Fed. Cas. No. 7808.) So it has juris-

diction, when the person may be found in the district, in case of fraud, trust, or contract (*Massie v. Watts*, 6 Cranch. 148; *Briggs v. French*, 1 Sum. 504; Fed. Cas. No. 1870); or when parties, citizens of different States, own land on the opposite side of a dividing line stream (*Rundle v. Delaware & R. Can. Co.*, 1 Wall. Jr. 275; Fed. Cas. No. 12139; *Stillman v. White Rock Manuf. Co.*, 3 Wood. & M. 538; Fed. Cas. No. 13446); or if a mill site is injured by the diversion of water in another State. (*Foote v. Edwards*, 3 Blatchf. 310; Fed. Cas. No. 4908.) Under Rev. Stats., sec. 738, a suit to enforce a claim to land, in which suit service may be made by publication, may be brought in the district where the property is situated though neither party resides in such district. (*Single v. Scott Paper Mfg. Co.*, 55 Fed. Rep. 553.) The fact that a suit relates to land lying within the district does not give jurisdiction thereof to the circuit court of the United States when it would not otherwise exist. (*Pooley v. Luco*, 72 Fed. Rep. 561.)

Change of residence before suit.—Mere residence is prima facie evidence of a change of domicile (*Shelton v. Tiffin*, 6 How. 163; *Butler v. Farnsworth*, 4 Wash. C. C. 101; Fed. Cas. No. 2240); but an intention to remove permanently to another State is never presumed. (*Reed v. Bertrand*, 4 Wash. C. C. 514; Fed. Cas. No. 11601.) The question of change of domicile is one of intention, chiefly, with the party, as to which his declarations must control unless overthrown by acts. To effect a change there must be 1. Residence in the new locality; 2. Intention to remain there. (*Chambers v. Prince*, 75 Fed. Rep. 176.) It must be proved by acts and not from declarations. (*Butler v. Farnsworth*, 4 Wash. C. C. 101; Fed. Cas. No. 2240; *Shelton v. Tiffin*, 6 How. 163.) The exercise of the right of suffrage after change is proof,

but citizenship may be proved by acts, although all rights of a citizen are not shown to have been claimed or exercised. (*Shelton v. Tiffin*, 6 How. 163.) If a person goes to a State with the deliberate intention of making that State his home, it is not necessary in order to acquire a domicile and citizenship therein that he should adopt a fixed and local residence within such State; but immediately upon arriving therein he becomes a citizen of such State and a resident of any district or part of it in which he may for the time being abide. (*Marks v. Marks*, 75 Fed. Rep. 321.) If the removal is real a citizen may remove to be able to sue in the circuit court (*Catlett v. Pacific Ins. Co.*, 1 Paine, 594; Fed. Cas. No. 2517; *Briggs v. French*, 2 Sum. 251; Fed. Cas. No. 1871; *Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Castor v. Mitchell*, 4 Wash. C. C. 191; Fed. Cas. No. 2507); but the removal must be bona fide animo manendi, and not merely ostensible, temporary, or colorable (*Jones v. League*, 18 How. 76; *Case v. Clarke*, 5 Mason, 70; Fed. Cas. No. 2490; *Rice v. Houston*, 13 Wall. 66; *Gardner v. Sharp*, 4 Wash. C. C. 609; Fed. Cas. No. 5236; *Butler v. Farnsworth*, 4 Wash. C. C. 101; Fed. Cas. No. 2240; *Read v. Bertrand*, 4 Wash. C. C. 514; Fed. Cas. No. 11601; *Shelton v. Tiffin*, 6 How. 163; *Alabama G. & S. R. Co. v. Carroll*, 84 Fed. Rep. 772), as for example the mere renting of a room in an adjoining State and sleeping there nights without changing the place of his business or of taking his meals (*Kingman v. Holthaus*, 59 Fed. Rep. 305); so of an administrator (*Rice v. Houston*, 13 Wall. 66); and of a trustee (*Shirk v. City of La Fayette*, 52 Fed. Rep. 857). The fact that a person has left the United States and become permanently domiciled in Canada with an intention to become naturalized does not make him a citizen for purpose of suing in federal courts. (*Bishop v. Averill*, 76 Fed. Rep. 386.)

Change after suit.—Jurisdiction depends on the state of things at the bringing of the action, and subsequent events cannot oust it. (*Mollan v. Torrance*, 9 Wheat. 537; *Dunn v. Clarke*, 8 Peters, 1; *Ex parte Kyle*, 67 Fed. Rep. 306; *Hardenbergh v. Ray*, 151 U. S. 112; *Tug River Coal & Salt Co. v. Brigel*, 86 Fed. Rep. 818.) So it cannot be divested by a change of residence of either party (*Morgan v. Morgan*, 2 Wheat. 290; *Connolly v. Taylor*, 2 Peters, 556; *Brigel v. Tug River Coal & Salt Co.*, 73 Fed. Rep. 13); and so where the action survives on the death of a party, and his administrator continues the suit (*Clarke v. Matthewson*, 12 Peters, 164; *Society of Shakers v. Watson*, 37 U. S. App. 141; 68 Fed. Rep. 730; *Whyte v. Gibbs*, 20 How. 541; *Trigg v. Conway*, Hemp. 711; Fed. Cas. No. 14173; *Hatfield v. Bushnell*, 1 Blatchf. 393; Fed. Cas. No. 6211); or when a railroad in the hands of a receiver is involved in a suit and the railroad subsequently passes to citizens of the same State as plaintiff (*Cross v. Evans*, 86 Fed. Rep. 1); or in proceedings to enforce a judgment (*Hatch v. Dorr*, 4 McLean, 112; Fed. Cas. No. 6206); or judgment may be revived by *scire facias*. (*Penn v. Klyne*, Peters C. C. 446; Fed. Cas. No. 10936.) The declaration speaks from the commencement of the action, and it is not necessary that the declaration should allege diverse citizenship at the date of filing the praecipe, if it alleges diverse citizenship at the time of filing the declaration. (*Chicago Lumber Co. v. Comstock*, 34 U. S. App. 414; 71 Fed. Rep. 477.) An amendment to the plaintiff's original pleading speaks as of the time of filing the original pleading as to citizenship. (*Baltimore and Ohio R. R. Co. v. McLaughlin*, 43 U. S. App. 181; 73 Fed. Rep. 519; *Brigel v. Tug River Coal & Salt Co.*, 73 Fed. Rep. 13; but see *contra*, *Laskey v. Newtown Min. Co.*, 56 Fed. Rep. 628.) But where some of the parties joined as defendants

were citizens of the same States as the complainant, and such parties were dismissed prior to the granting of an injunction, the court was not deprived of jurisdiction. (*Hopkins v. Oxley Stave Co.*, 49 U. S. App. 709; 83 Fed. Rep. 912.) Where the jurisdiction rests upon the diverse citizenship of the parties, and a third person who is a citizen of the same State as defendant intervenes, the court will have no jurisdiction of the latter's controversy with defendant unless the controversy between plaintiff and defendant is one which draws to the court the possession and control of the property (*United Electric Securities Co. v. Louisiana Electric Light Co.*, 68 Fed. Rep. 673); but the jurisdiction of the suit between the original parties is not ousted. (*Park v. New York L. E. & W. R. Co.*, 70 Fed. Rep. 641.)

§ 87 a. **Where patent infringement suits to be brought.**—In suits brought for the infringement of letters patent the circuit courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which such suit is brought. (29 U. S. Stats. 695.)

Infringement suits, where brought.—Prior to the passage of the above section a suit for the infringement of a patent could not be brought against a person or corporation in the federal courts in a State other than the State of residence of the person or State under whose laws the corporation was incorporated. (National Typewriter Co. v. Pope Mfg. Co., 56 Fed. Rep. 849; Adriance Platt & Co. v. McCormick Harvesting Mach. Co., 55 Fed. Rep. 257; Gorham Mfg. Co. v. Watson, 74 Fed. Rep. 418; Donnelly v. United States etc. Co., 66 Fed. Rep. 613; Cramer v. Singer Mfg. Co., 59 Fed. Rep. 74; Union Switch & S. Co. v. Hall Signal Co., 65 Fed. Rep. 625; but see, contra, Smith v. Sargent Mfg. Co., 67 Fed. Rep. 801; Earl v. Southern Pac. Co., 75 Fed. Rep. 609; Noonan v. Chester Park Athletic Club, 75 Fed. Rep. 334; National Butter Works v. Wade, 72 Fed. Rep. 298; In re Hohorst, 150 U. S. 653; Southern Pac. Co. v. Earl, 48 U. S. App. 716; 82 Fed. Rep. 690.) A nonresident of a district may be enjoined from committing acts of infringement within the district when he comes into it for that purpose, although he may not be subject to service of process therein, or to be sued as a defendant. (Kennedy v. Penn Iron & Coal Co., 67 Fed. Rep. 339.) Under the above section it is not necessary that the defendant be an inhabitant of the district if service is properly obtained on him. (Westinghouse Air Brake Co. v. Great Northern Ry. Co., 84 Fed. Rep. 9.)

§ 88. Suits by assignees.—Nor shall any circuit or district court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless

such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made. (Act of March 3, 1875, 18 U. S. Stats. 470, as amended by Act of March 3, 1887, 24 U. S. Stats. 552, and re-enacted to correct enrollment Aug. 13, 1888, 25 U. S. Stats. 433.)

Suits by assignee of choses in action.—The provision that the assignee of a chose in action cannot sue in a Federal court unless his assignor could have sued refers to the citizenship of the assignor, and not to the jurisdictional amount. (*Bowden v. Burnham*, 19 U. S. App. 448; 59 Fed. Rep. 752; *Chase v. Sheldon Roller Mills Co.*, 56 Fed. Rep. 625.) Since the act of 1875 the assignee of a chose in action may sue in the federal court. (*Van Bokkelin v. Cook*, 5 Sawy. 587; Fed. Cas. No. 16831.) Where a party claims through an assignment, he must affirmatively show by apt allegations that the action might have been sustained by the assignor. (*Turner v. Bank*, 4 Dall. 8; *Mollan v. Torrance*, 9 Wheat. 537; *Bank of U. S. v. Moss*, 6 How. 31; *Bradley v. Rhines*, 8 Wall. 393; *Holmes v. Goldsmith & Co.*, 147 U. S. 150.) Choses in action include all debts and all claims for damages for breach of contract (*Bushnell v. Kennedy*, 9 Wall. 387); all contracts, promises, and covenants for the delivery of the chattels or moneys (*Sheldon v. Sill*, 8 How. 441); open accounts or unliquidated accounts, as well as promissory notes (*Sere v. Pitot*, 6 Cranch, 332; *Wilkinson v. Wilkinson*, 2 Curt. 582; Fed. Cas. No. 17677); and all torts when connected with contracts (*Bushnell v. Kennedy*, 9 Wall. 387); but not torts arising from a breach of some duty to which the law attaches damages (*Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031); nor does the term apply to an action

by an assignee to recover the possession of the chose in action or damages for its wrongful detention (*Deshler v. Dodge*, 16 How. 622); as an action of replevin to recover a bank bill (*Deshler v. Dodge*, 16 How. 622); nor does the term "assignee" in the proviso in this section include executors and administrators (*Chappedelaine v. Dechenaux*, 4 Cranch, 306; *Childress v. Emory*, 8 Wheat. 642; *Meyer v. Foulkrod*, 4 Wash. C. C. 349; Fed. Cas. No. 9341); but an assignment by operation of law, as to an assignee in insolvency proceedings, is within the proviso (*Sere v. Pitot*, 6 Cranch, 332); or of a receiver in such proceedings. (*Bradford v. Jenks*, 2 McLean, 130; Fed. Cas. No. 1769.) The phrase "promissory notes negotiable by the law-merchant" contemplates notes in the hands of a bona fide purchaser for value, subject to no equities in favor of the maker. (*Gregg v. Weston*, 7 Biss. 360; Fed. Cas. No. 5800.) All cases not specially within the exception in this section are within the general operation of the act (*Briggs v. French*, 2 Sum. 251; Fed. Cas. No. 1871); for if the assignor could maintain the action at the time the suit was commenced, the assignee may sue. (*Chamberlain v. Eckert*, 2 Biss. 126; Fed. Cas. No. 2577; but see *Thaxter v. Hatch*, 6 McLean, 68; Fed. Cas. No. 13866.) The assignee of an appearance bail may sue; although the marshal and defendants are citizens of the same State. (*Bobyshall v. Oppenheimer*, 4 Wash. C. C. 482; Fed. Cas. No. 1592.) The holder of a foreign bill of exchange may sue in the circuit court (*Buckner v. Finley*, 2 Peters, 586); or of a bank bill (*Wood v. Dummer*, 3 Mason, 308; Fed. Cas. No. 17944); or he may sue a stockholder, although the note is payable to bearer. (*Bullard v. Bell*, 1 Mason, 243; Fed. Cas. No. 2121.) The holder of a note may sue thereon in the federal courts, although the nominal payee could not (*Bank v. Wistar*, 2 Peters, 318; *Smith*

v. Clapp, 15 Peters, 125; *Bonnafee v. Williams*, 3 How. 574; *Halstead v. Lyon*, 2 McLean, 226; Fed. Cas. No. 5968; *Sackett v. Davis*, 3 McLean, 101; Fed. Cas. No. 12203; *Bullard v. Bell*, 1 Mason, 243; Fed. Cas. No. 2121; *Towne v. Smith*, 1 Wood. & M. 115; Fed. Cas. No. 14115); as to holder of an accommodation note, see *Noell v. Mitchell*, 4 Biss. 346; of a non-negotiable note see *Shuford v. Cain*, 1 Abb. U. S. 302; Fed. Cas. No. 12823); or although the payee indorsed it (*Varner v. West*, 1 Woods, 493; Fed. Cas. No. 16885); and so where maker and payee were citizens of different States (*White v. Leahy*, 3 Dill. 378; Fed. Cas. No. 17551; *Kirkman v. Hamilton*, 6 Peters, 20); but if both maker and payee are citizens of the same State, an indorsee cannot sue in the federal courts (*Keary v. Bank*, 16 Peters, 90; *Gibson v. Chew*, 16 Peters, 315; *Dromgoole v. Bank*, 2 How. 241; *Coffee v. Planters' Bank*, 13 How. 183; *Willes v. Newberry*, 4 McLean, 226; Fed. Cas. No. 17378; *Shuford v. Cain*, 1 Abb. U. S. 302; Fed. Cas. No. 12823; *Small v. King*, 5 McLean, 147; Fed. Cas. No. 12960); nor can he sue a remote indorser if the intermediate indorser could not (*Mollan v. Torrance*, 9 Wheat. 537); but if the indorsee and the immediate indorser are citizens of different States, he may sue in the circuit court (*Young v. Bryan*, 6 Wheat. 146; *Evans v. Gee*, 11 Peters, 80; *Coffee v. Planters' Bank*, 13 How. 183; *Campbell v. Jordan*, Hemp. 534; Fed. Cas. No. 2362; *Dennison v. Larned*, 6 McLean, 496; Fed. Cas. No. 3798; *Codwise v. Gleason*, 3 Day, 3), although the intermediate indorser could not. (*Wilson v. Fisher*, Bald. 133; Fed. Cas. No. 17803; *Milledollar v. Bell*, 2 Wall. Jr. 334; Fed. Cas. No. 9549.) If the first and second indorsers agree to share the loss, the former may sue on the agreement, although the latter and the payee are citizens of the same State. (*Phillips v. Preston*, 5 How. 278.) If a note does not, under the

laws of the State, possess the qualities of a negotiable instrument, the assignee cannot sue. (*Gregg v. Weston*, 7 Biss. 360; Fed. Cas. No. 5800.) The assignee of a note and mortgage, if of the requisite citizenship, may file a bill to foreclose in the circuit court (*Seckel v. Backhaus*, 7 Biss. 354; Fed. Cas. No. 12599); but if they are assigned by delivery, he cannot maintain the action if the assignor and mortgagor are citizens of the same State (*Mersman v. Werges*, 3 Fed. Rep. 378; 1 McCrary, 528; reversed 112 U. S. 139); so of the assignee of a bond and mortgage. (*Sheldon v. Sill*, 8 How. 441; *Hill v. Winne*, 1 Biss. 275; Fed. Cas. 6503; contra, *Dundas v. Bowler*, 3 McLean, 204; Fed. Cas. No. 4140.) The assignee of a municipal bond, if negotiable, may sue in the circuit court (*Porter v. Janesville*, 3 Fed. Rep. 617; *Halsey v. Township*, 3 Fed. Rep. 364); or of a negotiable bond, although the obligor and the person to whom it was issued were citizens of the same State. (*White v. Vermont & M. R. R. Co.*, 21 How. 575; *Lexington v. Butler*, 14 Wall. 282; *Bradley v. Williams*, 3 Hughes, 26; Fed. Cas. No. 1789.) A coupon payable to bearer is negotiable by the law-merchant (*Pettit v. Hope*, 18 Blatchf. 180; 2 Fed. Rep. 623), and the holder may sue in the federal courts (*Thomson v. Lee Co.*, 3 Wall. 327; *McCoy v. Washington*, 3 Wall. Jr. 381; 3 Phila. 290; Fed. Cas. No. 8731; *Pettit v. Hope*, 2 Fed. Rep. 623); although the party from whom he received it could not maintain the action. (*Cooper v. Thompson*, 13 Blatchf. 434; Fed. Cas. No. 3202; see *Clark v. Janesville*, 1 Biss. 98; Fed. Cas. No. 2854.) An equitable assignee of a claim to an account cannot sue if his assignor could not. (*Wilkinson v. Wilkinson*, 2 Curt. 582; Fed. Cas. No. 17677.) A suit to compel a specific performance or to enforce its stipulations was not, under this section, maintainable by an assignee. (*Corbin v. Black*

Hawk Co., 105 U. S. 659; *Deshler v. Dodge*, 16 How. 622; *Bushnell v. Kennedy*, 9 Wall. 387; *Sere v. Pittot*, 6 Cranch, 332.) The assignee of a judgment founded on contract cannot sue unless suit might have been brought had assignment not been made. (*Walker v. Powers*, 104 U. S. 245.) If a bill is filed to set aside a judgment, the assignee of the judgment creditor may file a cross-bill to enforce the judgment, although both parties are citizens of the same State. (*Railroad Cos. v. Chamberlain*, 6 Wall. 748.) The assignee of a judgment against a foreign debtor may file a bill in the circuit court to set aside a fraudulent conveyance made by the debtor (*Dexter v. Smith*, 2 Mason, 303; *Fed. Cas. No. 3866*); and so can the assignee of a judgment against an indorser of a bill of exchange. (*Bean v. Smith*, 2 Mason, 252; *Fed. Cas. No. 1174*.) If the assignee obtains judgment on a note, he may sue to enforce a lien on certain property of the judgment debtor. (*Ober v. Gallagher*, 93 U. S. 199.) An assignee may prosecute an action founded on a tort without regard to the citizenship of the assignor (*Van Bokkelin v. Cook*, 5 Sawy. 587; *Fed. Cas. No. 16831*); so of the assignee of a right of action for damages for failure to protect a note from protest. (*Barney v. Globe Bank*, 5 Blatchf. 107; *Fed. Cas. No. 1031*; *Bernards Township v. Stebbins*, 109 U. S. 341; *Ackley School District v. Hall*, 113 U. S. 135; *Farmington v. Pillsbury*, 114 U. S. 138; *New Providence v. Halsey*, 117 U. S. 336; *Cashman v. Amador etc. Canal Co.*, 118 U. S. 58; *Shoecraft v. Bloxham*, 124 U. S. 730; *Blacklock v. Small*, 127 U. S. 96; *Montalet v. Murray*, 4 Cranch, 46; *Morgan v. Gay*, 19 Wall. 81.)

Assignment to confer jurisdiction.—The circuit court has jurisdiction of a controversy between citizens of different States, although property was conveyed to one of the parties to enable the court to en-

tain the suit (*McDonald v. Smalley*, 1 Peters, 620; *Smith v. Kernochen*, 7 How. 198; *Osborne v. Brooklyn City R. R. Co.*, 5 Blatchf. 366; Fed. Cas. No. 10597; *Foote v. Hancock*, 15 Blatchf. 343; Fed. Cas. No. 4911; *Newby v. Oregon Cent. R. R. Co.*, 1 Sawy. 63; Fed. Cas. No. 10145; *Briggs v. French*, 2 Sum. 251; Fed. Cas. No. 1871; *Hoyt v. Wright*, 4 Fed. Rep. 168); but the transfer must be absolute (*De Laveaga v. Williams*, 5 Sawy. 573; Fed. Cas. No. 3759); and not merely colorable (*Maxwell v. Levy*, 2 Dall. 381; *Jones v. League*, 18 How. 76; *Barney v. Baltimore*, 6 Wall. 280; see *Richardson v. Mattison*, 5 Biss. 31; Fed. Cas. No. 11790; *Crawford v. Neal*, 144 U. S. 585); nor collusive (*Marion v. Ellis*, 9 Fed. Rep. 367; S. C. 10 Fed. Rep. 410; *Williams v. Town of Nottawa*, 3 Morr. Tr. 256; *De Laveaga v. Williams*, 5 Sawy. 574; Fed. Cas. No. 3759; *Coffin v. Haggin*, 11 Fed. Rep. 219); and a party having an equitable title may maintain an action at law thereon. (*Browne v. Browne*, 1 Wash. C. C. 429; Fed. Cas. No. 2035; *Brown v. Arbuncle*, 1 Wash. C. C. 484; Fed. Cas. No. 1990.)

Colorable and void assignments.—See *Maxfield v. Levy*, 4 Dall. 330 (C. Ct.); *Hancock v. Hillegas*, 2 Dall. 380 (C. Ct.); *Tredway v. Sanger*, 107 U. S. 323; *Mersman v. Werges*, 112 U. S. 139; *Barry v. Edmunds*, 116 U. S. 550; *Ashley v. Board of Supervisors*, 83 Fed. Rep. 534; *Crawford v. Neal*, 144 U. S. 585.

Motive for assignment will not affect right to sue.—The motive with which a person purchases property or a claim has nothing to do with his right to maintain an action thereon in the national courts. (*Neal v. Foster*, 13 Sawy. 236; *Vimont v. Chicago & N. W. R. Co.*, 69 Iowa, 297, *Crawford v. Neal*, 144 U. S. 585.) The question of motive for assignment is material only as a circumstance to be considered in determining whether the transfer was in fact real.

(Ashley v. Board of Supervisors, 54 U. S. App. 450; 83 Fed. Rep. 534.) When the owners of a mortgage sold it to a citizen of another State for the express purpose of giving jurisdiction, if the purchaser took it in good faith without knowledge of such purpose the mortgage passed the legal title. (Smith v. Kernochen, 7 How. 198; Banigan v. Worcester, 30 Fed. Rep. 392.) The transfer of interest by one party to a suit in a federal court, to a citizen of the same State with the other party, will not oust jurisdiction of the court. (Jarboe v. Templer, 38 Fed. Rep. 213.) Even where a statute of a State provided that in the case of fraudulent assignment a court of competent jurisdiction is authorized to declare the assignment void, although the assignee is not shown to have notice of the fraud, the equity courts of the United States having jurisdiction can enforce rights under such statute. (Bernheim v. Birnbaum, 30 Fed. Rep. 885.)

Suits by assignee of choses in action.—The jurisdiction is to be determined according to the status at the time the suit is brought, and not at the time when the assignment was made. (Jones v. Shapera, 13 U. S. App. 481; 57 Fed. Rep. 457; but see Coler v. Grainger County, 43 U. S. App. 252; 74 Fed. Rep. 16; Benjamin v. City of New Orleans, 71 Fed. Rep. 758.) The court has no jurisdiction over cases where an assignee is plaintiff unless the court would have had jurisdiction had the action been brought by the assignor. (Newgass v. New Orleans, 33 Fed. Rep. 196.) But where the transfer of choses in action may be made by delivery, and the obligation is made to bearer and by a corporation, the court has jurisdiction, although had the suit been brought by a former holder the court would have had no jurisdiction. (Id.); this rule is applied to an action by an assignee

on a county warrant payable to bearer. (*Rollins v. Chaffee County*, 34 Fed. Rep. 91.) But an assignee by indorsement of a city warrant cannot sue thereon, unless the indorser could have sued. (*Cloud v. City of Sumas*, 52 Fed. Rep. 177.) An assignee of county warrants payable to a third person or his order, and not indorsed by him in blank or to the order of the assignee, cannot sue thereon in the circuit court unless such third person could have done so. (*King Iron Bridge & Mfg. Co. v. Oteo County*, 120 U. S. 225.) The Judiciary Act of March 3, 1887, was intended to prohibit suits in the federal court by assignees of choses in action unless the original assignor was entitled to maintain the suit in all cases, except suits on foreign bills of exchange, and except suits on promissory notes made payable to bearer and executed by a corporation. (*Wilson v. Knox County*, 43 Fed. Rep. 481; *Hudson v. Bishop*, 38 Fed. Rep. 680.) Where the record does not show of what State the assignor is a corporation, the prohibition of the statute applies. (*Brock v. Northwestern Fuel Co.*, 130 U. S. 341.) The assignee of a contract cannot sue for its enforcement in the circuit court if the assignor could not have done so. (*Shoecraft v. Bloxham*, 124 U. S. 730.) So of the assignee of a written contract of lease. (*Republic Iron Min. Co. v. Jones*, 37 Fed. Rep. 721.) And the rule applies to a suit by an assignee of an open account. (*Chase v. Sheldon Roller Mills Co.*, 56 Fed. Rep. 625.) So of the assignee of a contract of reinsurance. (*Laird v. Indemnity Mut. M. Assur. Co.*, 44 Fed. Rep. 712.) So of the assignee of a guardian's bond (*Hudson v. Bishop*, *supra*); and the rule applies against an indorsee of a note who sues a remote indorser, if the person from whom the indorsee derived title could not have sued. (*Skinner v. Barr*, 77 Fed. Rep. 816.) So the restriction applies to the assignee of a mortgage given as security for a

promissory note (*Sheldon v. Sill*, 8 How. 441; but see act of March 3, 1875, chap. 137; *Boston Safety & D. Co. v. City of Plattsmouth*, 76 Fed. Rep. 881); but the rule does not apply to the indorsement and transfer by the payee of notes which were made by him merely that he might, as agent of the maker, raise money for it by negotiating them with third persons. (*Wachusett Nat. Bank v. Sioux City Stove Works*, 56 Fed. Rep. 321.) Although the maker and payee of a negotiable note secured by a mortgage are citizens of the same State, an indorsee of the note living in another State may, since the act of 1875, foreclose the mortgage in the United States circuit court. (*Treadway v. Sanger*, 107 U. S. 323; *Mersman v. Werges*, 112 U. S. 139.) So it applies to the assignee of a claim for damages for refusal to pay for goods purchased under an oral contract. (*Simons v. Ypsilanti Paper Co.*, 33 Fed. Rep. 193.) Under United States Revised Statutes, section 629, a suit to enforce performance of a contract is one to recover the contents of a chose in action. (*Shoecraft v. Bloxham*, 124 U. S. 730.) The circuit court of the United States has no jurisdiction of a suit founded on contract in favor of an assignee, where it does not appear that the plaintiff's assignor could have brought suit on the contract if no assignment had been made. (*Brock v. Northwestern Fuel Co.*, 130 U. S. 341; *Shoecraft v. Bloxham*, *supra*.) An action to recover the amount of a mortgage bond is not within the jurisdiction of the circuit court when brought by an assignee thereof, in a case in which the assignor could not have sued. (*Blacklock v. Small*, 127 U. S. 96.) Under the act of 1875, an assignee of a State judgment, recovered on contract, cannot maintain, in the circuit court, an independent suit for its enforcement, unless the assignor could have maintained the suit if he had not assigned the judgment. (*Mississippi*

Mills v. Cohn, 150 U. S. 202.) A suit to recover money owed to plaintiff by a third person, which defendant agreed to pay to the extent of a certain fund is a suit to recover the contents of a chose in action. (Mexican Nat. R. Co. v. Davidson, 157 U. S. 201.)

To what restriction does not extend.—The United States circuit court has jurisdiction of an action for damages for wrongfully entering on lands and carrying away the timber thereon, brought by an assignee of a claim against a citizen of another State, although the assignor could not himself have sued in that court. (Ambler v. Eppinger, 137 U. S. 480.) The exception in the statute did not extend to a suit on a chose in action to recover a specific chattel, or for damages for its wrongful caption or detention. (Id.; Deshler v. Dodge, 16 How. U. S. 622.) It does not apply to mere naked rights founded on some wrongful act or neglect of duty to which the law attaches damages. (Bushnell v. Kennedy, 9 Wall. U. S. 387.) The sale of an equitable interest in land is not a mere assignment of a right of action relating thereto; and in a suit in a national court it is not material what is the citizenship of his vendor, under whom he claims. (Gest v. Packwood, 34 Fed. Rep. 525.) An order drawn on a city and accepted is not an assignment of the contractor's claim, within the meaning of the act of August 13, 1888, providing that an assignee cannot bring suit in the circuit court unless the assignor might have done so, had no assignment been made. (Ripley v. Superior, 41 Fed. Rep. 113.) County bonds and coupons being made by a corporation come within the exception to the rule (McLean v. Valley County, 74 Fed. Rep. 389); but city warrants transferred by indorsement cannot be sued on if the assignor could not have sued on it. (Cloud v. City of Sumas, 52 Fed. Rep. 177.) The restriction does not extend to suits removed to such court from

a State court. (*Delaware County v. Diebold Safe & Lock Co.*, 133 U. S. 473; see *Ackley School District v. Hall*, 113 U. S. 135; *Chickaming v. Carpenter*, 106 U. S. 663; *Marine etc. Min. & Mfg. Co. v. Bradley*, 105 U. S. 175.)

Holders of negotiable instruments.—In the act of 1887 the clause “or of any subsequent holder of such instrument be payable to bearer, and be not made by any corporation,” the word “of” preceding the words “such instrument” should be held to be “if.” (*Newgass v. New Orleans*, 33 Fed. Rep. 196.) The act of August 13, 1888, corrects the error mentioned. The test of the negotiability of a note, in order to determine the right of an assignee to sue thereon in the circuit court of the United States, under the act of Congress of 1875, is its negotiability according to the principles of the law-merchant, and is not affected by State statutes. (*Windsor Sav. Bank v. McMahon*, 38 Fed. Rep. 283.) The provision relating to suits by an assignee under the act of 1888 does not forbid the federal court to take jurisdiction of a suit by the holder of an order, a resident of a foreign State, against the drawee, a resident of the State of the drawer, the citizenship in such case being diverse. (*Superior v. Ripley*, 138 U. S. 93.) But one who buys a promissory note payable to order, and afterward fills the blank with his own name as payee, is an assignee within the act of 1875, as amended, and is not entitled to sue the original holder and the maker, both being citizens of the State in which suit is brought. (*Steel v. Rathbun*, 42 Fed. Rep. 390.) Where the maker and payee of a note are both citizens of the same State, it may be proved in a suit by the endorsee that the endorsee was in fact the real payee, and that there never had been any assignment of the note. (*Goldsmith v. Holmes*, 36 Fed. Rep. 484.) Drain orders drawn by a county drain commissioner upon a

county treasurer, and which are required to be paid by a tax assessed and collected from the owners of property benefited thereby, are so far negotiable that suit brought upon them by the holder is not outside of the jurisdiction of a Federal court. (See *Aylesworth v. Gratiot County*, 43 Fed. Rep. 350; *McMicken v. Webb*, 11 Peters, 25; *Bradley v. Rhines*, 8 Wall. 393; *Parker v. Ormsby*, 141 U. S. 81; *Dromgoole v. Farmers' & Merch. Bank*, 2 How. 241.)

§ 89. **Citizenship of national banking associations.**—That all national banking associations established under the laws of the United States shall, for the purpose of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State. (Act approved August 13, 1888; 25 U. S. Stats. 433, sec. 4, cl. 1.)

§ 90. **Not to affect certain cases.**—The provisions of this section shall not be held to affect the jurisdiction of the courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such bank. (25 U. S. Stats. 433, sec. 4, cl. 2.)

National banks.—Formerly the circuit court had jurisdiction of suits by or against national banks, without regard to citizenship. (*Wilson Co. v. Nat. Bank*, 103 U. S. 770.) Section 629 of the Revised Statutes authorizes national banks to sue or be sued in

the circuit courts (*First Nat. Bank v. Douglas Co.*, 3 Dill. 298, Fed. Cas. No. 4809); formerly irrespective of citizenship or amount (*Kennedy v. Gibson*, 8 Wall. 498; *Union Nat. Bank v. Chicago*, 3 Biss. 82, Fed. Cas. No. 14374; *Main v. Second Nat. Bank*, 6 Biss. 26, Fed. Cas. No. 8976; *First Nat. Bank v. Douglas Co.*, 3 Dill. 298, Fed. Cas. No. 4809; *Foss v. First Nat. Bank*, 1 McCrary, 474; but see *St. Louis Nat. Bank v. Brinkman*, 1 Fed. Rep. 46); it refers to associations as parties, and not to liabilities, or causes of action (*Commercial Nat. Bank v. Summons*, 1 Flip. 449, Fed. Cas. No. 3062); but it does not invest the circuit courts with exclusive jurisdiction; their jurisdiction is only concurrent with that of the State courts. (*Pettilton v. Noble*, 7 Biss. 449, Fed. Cas. No. 1104; *Snohomish County v. Puget Sound Nat. Bank*, 81 Fed. Rep. 518.) A national bank cannot sue in the circuit court in another district unless the amount is over five hundred dollars (*St. Louis Nat. Bank v. Brinkman*, 1 Fed. Rep. 45); and a circuit court has no jurisdiction of an action by the assignee of a national bank to restrain the sale of bonds deposited to secure its notes. (*Van Antwerp v. Hulburd*, 8 Blatchf. 282, Fed. Cas. No. 16827.) A national bank may sue the maker of a note assigned to it (*Mitchell v. Walker*, 36 Leg. Int. 74, Fed. Cas. No. 9670); or may sue on a coupon of a municipal bond. (*First Nat. Bank v. Bennington*, 16 Blatchf. 53, Fed. Cas. No. 4807.) The mere grant to a corporation of the right to sue does not imply a right to sue in the Federal courts. (*Bank v. Deveaux*, 5 Cranch, 61; *Bank of U. S. v. Martin*, 5 Peters, 479.) The tenth subdivision of this section has been repealed by statute (Acts of 1881-82, ch. 290, sec. 4), and a national bank cannot now maintain a suit against residents of its own State and judicial district. (*Nat. Bank of Jefferson v. Fore*, 25 Fed. Rep. 209; *Danahy v. National Bank of Denison*, 24 U. S. App. 351; 64

Fed. Rep. 148.) A Federal court cannot issue a writ of attachment before final judgment against a national bank. (*Butler v. Coleman*, 124 U. S. 721.) The circuit court has jurisdiction of an action to ascertain or fix the liability upon shares of an insolvent national bank which are alleged to have been transferred with a fraudulent intent to escape such liability when the amount of the assessment exceeds \$2,000. (*Thompson v. German Ins. Co.*, 76 Fed. Rep. 892.) A suit to wind up the affairs of an insolvent national bank is a suit arising under the laws of the United States (*Snohomish County v. Puget Sound Nat. Bank*, 81 Fed. Rep. 518). The Federal courts have jurisdiction of actions brought by the receiver of an insolvent national bank to realize its assets, irrespective of the citizenship of the parties (*Linn County National Bank v. Crawford*, 69 Fed. Rep. 532; *Fisher v. Yoder*, 53 Fed. Rep. 565; *Lake Nat. Bank v. Wolfeborough*, 23 U. S. App. 734; 78 Fed. Rep. 517). A receiver of such a bank appointed by the comptroller is entitled to sue (*Thompson v. Pool*, 70 Fed. Rep. 725). A Federal court has a jurisdiction of a suit against an executor of an estate to enforce an assessment by the comptroller of the currency upon national bank stock (*Zimmerman v. Carpenter*, 84 Fed. Rep. 747; *Brown v. Ellis*, 86 Fed. Rep. 357). The Federal courts have exclusive jurisdiction of the offense of making false entries in books of a national bank (*In re Eno*, 54 Fed. Rep. 669).

§ 91. No appellate jurisdiction.—The last sentence of section 1 of the Act of March 3, 1875, 18 U. S. Stats. 470, conferring appellate jurisdiction upon circuit courts in suits arising in the district courts, was repealed by the Act of March 3, 1891,

sec. 4. (Act creating the Circuit Court of Appeals, 26 U. S. Stats. 829.)

§ 92. **Concurrent with court of claims.**—The circuit courts of the United States shall have concurrent jurisdiction with the court of claims in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars, and all causes brought for trial shall be tried by the court without a jury. The jurisdiction hereby conferred upon the said circuit and district courts shall not extend to cases brought to recover fees, salary, or compensation for official services of officers of the United States, or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof. (24 U. S. Stats. 505, sec. 2; as amended 30 U. S. Stats. 495.)

§ 93 (637). **Jurisdiction of cases transferred from district courts on account of disability, etc.**—When any cause, civil or criminal, of whatever nature, is removed into a circuit court, as provided by law, from a district court wherein the same is cognizable, on account of the disability of the judge of such district court, or by reason of his being concerned in interest therein, or having been of counsel for either party, or being so related to or connected with either party to such cause as to render it improper, in his opinion, for him to sit on the trial thereof, such circuit court shall have the same cognizance of such cause and in like man-

ner, as the said district court might have, or as said circuit [court] might have if the same had been originally and lawfully commenced therein; and shall proceed to hear and determine the same accordingly. (Rev. Stats. sec. 637. See secs. 587, 601.)

§ 94 (638). Courts always open for certain purposes.—The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any judge of a circuit court may, upon reasonable notice to the parties, make and direct and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable, of course, according to the rules and practice of the court. (Rev. Stats. sec. 638.)

§ 95. Trusts and combinations in restraint of import trade.—That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act [declaring unlawful combinations and conspiracies in restraint of import trade], and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the attor-

ney general, to institute proceedings in equity to prevent and restrain such violations. * * * That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damage by him sustained and the costs of suit, including a reasonable attorney's fee. (28 U. S. Stats. 570.)

CHAPTER VIII.

REMOVAL OF CAUSE FROM STATE COURT.

- § 96. Removal of causes on ground that U. S. Constitution and laws are involved.
- § 97. Removal of causes not involving Constitution and laws—Diverse citizenship.
- § 98. Removal of separable controversies.
- § 99. Removal on ground of prejudice or local influence.
- § 102. Remand of cause removed on ground of prejudice and local influence.
- § 103. Removal of suits involving title under grants from different States.
- § 104. Removal of cause against persons denied any civil rights, etc.
- § 105. When petitioner is in actual custody of State court.
- § 106. Removal of suits and prosecutions against revenue and registration officers.
- § 107. Removal of suits by aliens against U. S. officers.
- § 108. Removal proceedings—Petition, when filed.
- § 109. Bond and security.
- § 110. State court to proceed no further in the suit.
- § 111. Time to file record—Misfeasance of clerk—Certiorari.
- § 112. Process, not affected by removal.
- § 113. Remand or dismissal of cause.
- § 113a. Removal from courts of Texas.
- § 114. Remanding order not appealable.
- § 115. Jury trial in circuit court.
- § 116. Trial by court—Waiver of jury.

- § 117. Division of opinion in civil causes—Decision by presiding judge.
- § 118. Division of opinion in criminal causes—Certificate.
- § 119. Division of opinion in civil causes—Certificate.

§ 96. Removal of causes arising under constitution and laws of United States.—That any suit of a civil nature, at law or in equity, arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the circuit courts of the United States are given original jurisdiction by the preceding section, which may now be pending, or which may hereafter be brought in any State court, may be removed by the defendant or defendants therein to the circuit court of the United States for the proper district. (Act of March 3, 1875, 18 U. S. Stats. 470, as amended by the Act of March 3, 1887; 24 U. S. Stats. 552, as re-enacted by the Act of August 13, 1888; 25 U. S. Stats. 433.)

Removal of causes generally.—Under the act of 1887 the right of removal extends only to the cases in which the circuit court would have jurisdiction if the action were begun originally in the circuit court. (*Mexican National R. Co. v. Davidson*, 157 U. S. 201; *In re Cilley*, 58 Fed. Rep. 977; *Reed v. Reed*, 31 Fed. Rep. 49; *County of Yuba v. Pioneer G. M. Co.*, 32 Fed. Rep. 183; but see *Cates v. Allen*, 149 U. S. 451.) The right to remove a cause cannot be defeated by the fact that the form in which the suit has been brought under a State statute is one in which the Federal court cannot entertain it, if in any form the

Federal court would have jurisdiction (*Wilson v. Smith*, 66 Fed. Rep. 81.) In removed cases the jurisdiction of the Federal courts is no wider than that of the courts in which the cases were begun, and hence the Federal courts have no jurisdiction in suits, removed from the State courts to enforce provisions of the interstate commerce act. (*Swift v. Philadelphia & R. R. Co.*, 58 Fed. Rep. 858.) There is no difference in the method of determining whether a case can be removed, between cases in which the right to such removal depends upon questions of fact and those in which it depends upon questions of law arising upon the record (*Snohomish County v. Puget Sound Nat. Bank*, 81 Fed. Rep. 518). The right to a removal of the cause is a right conferred directly by Congress, and does not depend on the action of the State court (*Fisk v. U. P. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 4827), which can neither confer it nor take it away. (*Clippinger v. Mo. Val. L. Ins. Co.*, 22 Int. Rev. Rec. 47; 1 Flip. 456; Fed. Cas. No. 2901; *Hatch v. Chicago R. I. & P. R. R. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204.) If the right has once become perfect, it cannot be taken away by subsequent amendment (*Kanouse v. Martin*, 15 How. 198; S. C. 1 Blatchf. 149, Fed. Cas. No. 9162; *Akerly v. Vilas*, 1 Abb. U. S. 284, Fed. Cas. No. 119; S. C. 2 Biss. 110; *Hatch v. Chicago R. I. & P. R. R. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204; *Fisk v. U. P. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 4827; S. C. 8 Blatchf. 243, Fed. Cas. No. 4828; *Muns v. Dupont*, 2 Wash. C. C. 463, Fed. Cas. No. 9931; *Ladd v. Tudor*, 3 Wood. & M. 325, Fed. Cas. No. 7975), neither in the State or Federal court by release of part of the claim (*Gordon v. Longest*, 16 Peters, 97; *Roberts v. Nelson*, 8 Blatchf. 74, Fed. Cas. No. 11907), or otherwise. (*Stanley v. Chicago R. I. & P. R. R. Co.*, 3 Cent. L. J. 430; *Mathews v. Lyall*, 6 McLean, 13, Fed. Cas. No. 9285; *Wright v. Wells*,

Peters C. C. 220; Fed. Cas. No. 18101; Hayward v. Nordberg Mfg. Co., 54 U. S. App. 639, 85 Fed. Rep. 4.) A party loses none of his rights to insist upon a removal of the cause by his voluntary appearance (Stevens v. Richardson, 9 Fed. Rep. 191); if he appears and obtains time to answer, and gives notice of a motion to dismiss a temporary injunction, it is not a waiver of the right. (Stevens v. Richardson, 9 Fed. Rep. 191; 20 Blatchf. 53.) A party brought into a State court by an order to interplead, may, on motion of the original defendant, if otherwise qualified, remove the cause. (Postmaster Gen'l v. Cross, 4 Wash. C. C. 326, Fed. Cas. No. 11306; Martin v. Taylor, 1 Wash. C. C. 1, Fed. Cas. No. 9166.) A party is not precluded by the acts of an attorney appointed for him by the court in his absence. (Fisk v. Fisk, 4 Martin, N. S., 676.) A party failing to obtain a removal loses none of his rights by contesting the suit on its merits. (New Orleans etc. R. Co. v. Mississippi, 102 U. S. 135; The Removal Cases, 100 U. S. 457; Ins. Co. v. Dunn, 19 Wall. 214; Ayers v. Chicago, 101 U. S. 184; Railroad Co. v. Ketchum, 101 U. S. 289; Bible Soc. v. Grove, 101 U. S. 610; Burke v. Flood, 1 Fed. Rep. 541; 6 Sawy. 220.) Such contesting is not a waiver of his rights. (Insurance Co. v. Dunn, 19 Wall. 214; Gordon v. Longest. 16 Peters, 98; Kanouse v. Martin, 15 How. 198; Stevens v. Phoenix Ins. Co., 41 N. Y. 149; Hadley v. Dunlap, 10 Ohio St. 1; Stanley v. Chicago R. I. & P. R. Co., 3 Cent. L. J. 430.) The right to a removal may be waived (Home Ins. Co. v. Curtis, 32 Mich. 402), as by agreement by direct consent, or by nonexercise of the right (Hanover Nat. Bank. v. Smith, 13 Blatchf. 224, Fed. Cas. No. 6035), as by consenting to a preference (Hanover Nat. Bank v. Smith, 13 Blatchf. 224, Fed. Cas. No. 6035), or by stipulation, or any conduct

equivalent to a waiver. (*Hanover Nat. Bank v. Smith*, 13 Blatchf. 224, Fed. Cas. No. 6035.)

Cases arising under the constitution, laws, or treaties generally.—Whenever the decision of a case depends upon the construction of the Constitution of the United States, an act of Congress, or treaty, the case may be removed if the matter in dispute exceeds the jurisdictional amount, which was formerly \$500, but now \$2,000. (*Gold Washing & W. Co. v. Keyes*, 96 U. S. 199; *Woolridge v. McKenna*, 8 Fed. Rep. 650; (*Connor v. Scott*, 4 Dill. 242, Fed. Cas. No. 3119); *New Orleans M. & T. R. Co. v. Mississippi*, 102 U. S. 135.) A suit arises, whenever upon the whole record, there is a controversy involving the construction of either (*Cohens v. Virginia*, 6 Wheat. 264; *Mayor of New York, v. Cooper*, 6 Wall. 247; *Tennessee v. Davis*, 100 U. S. 257; *Van Allen v. Atchison C. & P. R. Co.*, 3 Fed. Rep. 545; *Hatch v. Wallamet Iron B. Co.*, 7 Sawy. 127, 6 Fed. Rep. 326; *New Orleans etc. Railroad v. Mississippi*, 102 U. S. 135; *Gold Wash. & W. Co. v. Keyes*, 96 U. S. 201; *Connor v. State*, 4 Dill. 242, Fed. Cas. No. 3119; *Woolridge v. McKenna*, 8 Fed. Rep. 650; *State of Minn. v. Duluth & J. R. R. Co.*, 87 Fed. Rep. 497; *Woodfin v. Phoebus*, 30 Fed. Rep. 289; *Southern Pac. R. R. Co. v. California*, 118 U. S. 109); but they must be directly and not incidentally called in question (*Tennessee v. Union & Planters' Bk.*, 152 U. S. 454; *Fitzgerald v. Missouri P. R. Co.*, 45 Fed. Rep. 812); a suggestion by one party that the other will or may set up a claim under the Constitution or laws of the U. S. does not make the suit one arising under such Constitution or laws (*Tennessee v. Union & Planters' Bk.* 152 U. S. 454; *Sawyer v. Kochersperger*, 170 U. S. 303); and if a suit involves a Federal question it may be removed, although other questions founded on principles of general law may be involved

(Connor v. Scott, 4 Dill. 242, Fed. Cas. No. 3119; and although a State is plaintiff (New Orleans M. & T. R. Co. v. State, 13 Chic. L. N. 93); and the citizenship of the parties has nothing to do with the question. (Wilder v. Union Nat. Bank, 9 Biss. 178, Fed. Cas. No. 17651.) If the plaintiff is a corporation created by an act of Congress, the case arises under the laws of Congress (Osborn v. Bank of U. S., 9 Wheat. 738; Union Pac. R. Co., v. McComb, 1 Fed. Rep. 799; 17 Blatchf. 510; Gold Wash. Co. v. Keyes, 96 U. S. 199, distinguished; Railroad Company v. Mississippi, 102 U. S. 135; Butler v. Nat. Home for Disabled Volunteer Soldiers, 144 U. S. 64; Supreme Lodge K. of P. v. Hill, 42 U. S. App. 200; 76 Fed. Rep. 468; Texas & Pac. R. R. Co. v. Cody, 166 U. S. 606; Lund v. Chicago R. I. & P. Ry. Co., 78 Fed. Rep. 385; Allen v. Texas Pac. Ry. Co., 25 Fed. Rep. 513); but the fact that Congress confers certain rights on a State corporation does not make it a Federal one (Oregon Short Line & U. N. R. Co. v. Skottowe, 162 U. S. 490). That a national bank is a party is not alone sufficient to give jurisdiction (25 U. S. Statutes 436; Bailey v. Mosher, 74 Fed. Rep. 15; Hallam v. Tillinghast, 75 Fed. Rep. 849; Wichita Nat. Bank v. Smith, 36 U. S. App. 530; 72 Fed. Rep. 568; Cooper v. Leather Mfg. Bk., 29 Fed. Rep. 161; but see Auburn S. Bank v. Hayes, 61 Fed. Rep. 911; Bailey v. Mosher, 27 U. S. App. 339; 63 Fed. Rep. 488); but if the suit is one to wind up the affairs of a bank or is brought by the United States the suit may be removed (Speckart v. German Nat. Bank, 85 Fed. Rep. 12; 25 U. S. Stat. 436). Cases involving questions under the bankrupt act are removable (Connor v. Scott, 4 Dill. 242, Fed. Cas. No. 3119; Houser v. Clayton, 3 Woods, 273, Fed. Cas. No. 6739; Herbert v. Lefevre, 31 La. An. 363; Payson v. Dietz, 2 Dill. 504, 5 Chic. L. N. 434, Fed. Cas. No. 10861; Wehl v. Wald.

18 Blatchf. 163; 3 Fed. Rep. 93; *Woolridge v. McKenna*, 8 Fed. Rep. 650); or cases under the homestead laws of the United States (*Van Allen v. Atchinson C. & P. R. Co.*, 3 Fed. Rep. 545; 1 McCrary, 598); or under the act of Congress respecting customs and duties (*Orner v. Saunders*, 3 Dill. 284, Fed. Cas. No. 10584); but the erroneous levy of State taxes does not involve a Federal question (*Berger v. Douglas Co.*, 5 Fed. Rep. 23). So where the State supreme court in the State where action is brought refuses to make the construction of the laws of another State decided by its supreme court the rule of decision, it does not involve a Federal question (*Wiggins Ferry Co. v. Chicago & A. R. Co.*, 11 Fed. Rep. 381; 3 McCrary, 609); where the substantial controversy is as to the infringement of a patent the cause is a removable one (*Moyes v. Stirling Co.*, 71 Fed. Rep. 433). A case brought to enforce the contract for a royalty is not a case arising under the patent laws, unless brought against a citizen of another State praying for an injunction. (*Root v. Lake Shore & Mich. S. R. Co.*, 11 Fed. Rep. 349.) Action upon adverse proceedings to prevent the issuance of a patent for a mining claim are removable (*Frank G. & S. M. Co. v. Larimer M. & S. Co.*, 8 Fed. Rep. 724; 2 McCrary, 138); but where the only question is as to local laws, rules and regulations, the case is not removable. (*Trafton v. Nougues*, 4 Sawy. 178, Fed. Cas. No. 14134.) And an action simply to recover damages for trespass upon plaintiff's mining claim is not removable (*Argonaut Mining Co. v. Kennedy Min. Co.*, 84 Fed. Rep. 1). But a suit to determine who has right to the possession and to the issuance to him of a patent is removable (*Strasburger v. Beecher*, 44 Fed. Rep. 209). Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, care or pro-

tection, or defense of a party, in whole or in part. (Railroad Co. v. Mississippi, 102 U. S. 135.) A case relating to the title to land is not one of Federal jurisdiction where rights depend on State statutes or the general principles of law (McStay v. Friedman, 92 U. S. 723; Romie v. Casanova, 91 U. S. 380; Trafton v. Nougues, 4 Sawy. 178, Fed. Cas. No. 14134); but only such as depend on a disputed construction of the Constitution and laws of the United States (Trafton v. Nougues, 4 Sawy. 178, Fed. Cas. No. 14134); so a party who claims land under an act of Congress, imposing a direct tax, may remove an ejectment suit (Payton v. Bliss, 1 Woodw. 170, Fed. Cas. No. 11055); but he cannot remove if he claims under a grant from the State in which suit is pending at the time. (Shepherd v. Young, 1 B. Mon. 203.) Where in an action of trespass the defendant justifies the alleged trespass under authority of a court and the laws of the United States, the cause is removable. (Houser v. Clayton, 3 Woods, 273, Fed. Cas. No. 6739.) A case to be removable as arising under the Federal constitution and laws, must actually involve some question depending upon the correct construction thereof (Carson v. Dunham, 121 U. S. 421), and it must appear that it is so involved, what it is, and how it arises (McFadden v. Robinson, 22 Fed. Rep. 10; Hambleton v. Dunham, 22 Fed. Rep. 405). Where it appears that a Federal question is involved the right of removal by the defendant is not lost by reason of insufficient denials in the answer. (Miller v. Tobin, 18 Fed. Rep. 609.) The power of a State to tax a franchise of a corporation, derived through an act of Congress, is a question arising under the laws of the United States, and is removable (Southern Pac. Ry. Co. v. California, 118 U. S. 109). Cases affecting rights and titles claimed under commissions held and authority exercised under the United States are removable (Carson

v. Dunham, 121 U. S. 421). Where defendant claimed ownership in land under a State statute subsequently repealed by a statute which impaired the obligation of contracts, a Federal question is presented, and a disclaimer of reliance upon the repealing act does not eliminate the issue (*Illinois v. Illinois Cent. Ry. Co.*, 33 Fed. Rep. 721). Whether or not an obstruction placed in navigable waters is a nuisance is not a Federal question in the absence of a congressional statute on the subject (*Kenyon v. Knipe*, 46 Fed. Rep. 309); nor is a Federal question involved in a suit to determine whether a grantee from the United States have any littoral rights (*Kenyon v. Knipe*, 46 Fed. Rep. 309). The right to an injunction against copying bottles, labels, etc., after the expiration of a design patent, does not involve a Federal question (*Societe Anonyme v. Cook*, 40 Fed. Rep. 382). A proceeding by the State to enforce its laws must be done through agencies of the State, and any Federal question involved must be set up in the State court, and then be reviewed in the supreme court of the United States (*Day v. Chicago M. & St. P. Ry. Co.*, 45 Fed. Rep. 82). An action against private parties for wrongfully causing a United States marshal to levy an execution on plaintiff's chattels involves a Federal question and is removable (*Hurst v. Cobb*, 61 Fed. Rep. 1; see, also, *Sowles v. Witters*, 46 Fed. Rep. 497); and an action for damages for false imprisonment based upon acts done by defendants as marshal and deputy may be removed (*Woods v. Drake*, 70 Fed. Rep. 881); and an action upon a marshal's bond (*McKee v. Brooks*, 64 Tex. 255). An action involving the determination of a question of interstate commerce involves a Federal question (*State of South Carolina v. Port Royal & A. Ry. Co.*, 56 Fed. Rep. 333; *People v. Rock Island & P. Ry. Co.*, 71 Fed. Rep. 753; *Lowry v. Chicago B. & Q. R. R. Co.*, 46 Fed. Rep. 83; but see *Swift v.*

Philadelphia & R. R. Co., 58 Fed. Rep. 858). A suit may be removed which involves the enforcement of a judgment of a Federal court acting under the Federal laws (*First Nat. Bank v. Society for Savings*, 42 U. S. App. 517; 80 Fed. Rep. 581). The right of removal of a suit involving a Federal question is not affected by the fact that the supreme court has laid down general principles which will probably control the decision, such previous decisions being on entirely different grounds (*Mallon v. Hyde*, 76 Fed. Rep. 388).

Suits against a receiver removable.—A cause of action against a receiver appointed by a Federal court may be removed on the ground that it arises under the constitution and laws of the United States (*Gableman v. Peoria D. & E. Ry. Co.*, 82 Fed. Rep. 790; *Landers v. Felton*, 73 Fed. Rep. 311; *Hot Springs Ind. School Dist. v. First National Bank*, 61 Fed. Rep. 417; *Sullivan v. Barnard*, 81 Fed. Rep. 886); and the receiver is not prevented from removing the cause by the fact that a citizen of the State is joined as a defendant (*Gableman v. Peoria D. & E. Ry. Co.*, 82 Fed. Rep. 790; *Lund v. Chicago R. I. & P. Ry. Co.*, 78 Fed. Rep. 385; see contra, *Shearing v. Trumbull*, 75 Fed. Rep. 33); nor by the fact that the amount in controversy is less than \$2,000 (*Sullivan v. Barnard*, 81 Fed. Rep. 886; contra, *Ray v. Pierce*, 81 Fed. Rep. 881; *Hallam v. Tillinghast*, 75 Fed. Rep. 849; *Follett v. Tillinghast*, 82 Fed. Rep. 241); nor by the want of diverse citizenship of parties (*Jewett v. Whitcomb*, 69 Fed. Rep. 417). The fact that a railroad is purchased at a foreclosure sale and the purchaser assumes the liabilities of the receiver appointed by the Federal court does not make the case removable (*Reed v. Northern Pac. Ry. Co.*, 86 Fed. Rep. 817).

Federal question must appear on face of complaint.—It is well settled that under the act of 1887-

1888 a case cannot be removed from a State court into the United States court on the ground that a Federal question is involved unless that appears from the plaintiff's statement of his own claim; and if it does not so appear the want cannot be supplied by any statement in the petition for removal, demurrer, answer, or any subsequent proceeding. (*Chappell v. Waterworth*, 155 U. S. 102; *Postal Telegraph Cable Co. v. State of Alabama*, 155 U. S. 482; *State of Tennessee v. Union & Planters' Bank*, 152 U. S. 454; *Oregon Short Line & U. N. R. Co. v. Skottowe*, 162 U. S. 490; *Galveston H. & S. A. R. Co. v. State of Texas*, 170 U. S. 226; *Wabash Ry. Co. v. Barbour*, 43 U. S. App. 102; 73 Fed. Rep. 513; *State of Florida v. Charlotte Harbor Phosphate Co.*, 41 U. S. App. 405; 74 Fed. Rep. 578; *Wichita Nat. Bank v. Smith*, 36 U. S. App. 530; 72 Fed. Rep. 568; *State of Indiana v. Allegheny Oil Co.*, 85 Fed. Rep. 870; *State of Kansas v. Atchison T. & S. Fe Ry. Co.*, 77 Fed. Rep. 339; *City of Lincoln v. Lincoln St. Ry. Co.*, 77 Fed. Rep. 658; *Argonaut Min. Co. v. Kennedy Min. Co.*, 84 Fed. Rep. 1; *Caples v. Texas & P. R. R. Co.*, 67 Fed. Rep. 9; *Haggin v. Lewis*, 66 Fed. Rep. 199; contra, *Supreme Lodge Knights Pythias v. Wilson*, 30 U. S. App. 234; 66 Fed. Rep. 785; *Woods v. Drake*, 70 Fed. Rep. 881); and the statement in the complaint by way of anticipation of a defense that statutes are involved upon which a defense may be founded will not entitle the defendant to remove the case. (*State of Kansas v. Atchison T. & S. Fe Ry. Co.*, 77 Fed. Rep. 339; *State of Tennessee v. Union & Planters' Bank*, 152 U. S. 454; *Sawyer v. Kochersperger*, 170 U. S. 303.) The rule that the question must appear upon the face of the complaint does not apply where it appears therefrom that defendant is a national bank, and a receiver is subsequently appointed and petitions for removal (*Speckart v. German Nat. Bank*, 85 Fed. Rep. 12). Where

plaintiff's original pleading shows no ground for removal from a State to a Federal court the deficiency is not cured by an amended pleading filed after the defendant has removed the cause. (*Caples v. Texas & Pac. Ry. Co.*, 67 Fed. Rep. 9.)

Ancillary proceedings.—Ancillary suits are not removable independently. (*Clafflin v. McDermott*, 12 Fed. Rep. 375; *The Cortes Co. v. Thannhauser*, 9 Fed. Rep. 226.) A suit brought to enjoin a suit at law is only ancillary (*The Cortes Co. v. Thannhauser*, 9 Fed. Rep. 226; 21 Blatchf. 552; *Chittenden v. State*, 9 Fed. Rep. 226; 20 Blatchf. 59; *Clark v. Opdyke*, 17 N. Y. Supr. 383); so proceedings in garnishment are ancillary. (*Pratt v. Albright*, 9 Fed. Rep. 634; 10 Biss. 511.) Proceedings in garnishment process are ancillary, and garnishees are not parties to the suit. (*Cook v. Whitney*, 3 Woods, 715, Fed. Cas. No. 3166.) The rights of applying creditors are merely incidental to the action, and the court will exercise jurisdiction over them. (*N. Y. Silk Manuf. Co. v. Second Nat. Bank*, 10 Fed. Rep. 204.) An injunction suit is a sufficiently independent suit to authorize removal (*Bondurant v. Watson*, 103 U. S. 281). If supplementary proceedings are inseparably connected with the original judgment or decree, they cannot be removed; but it is otherwise where they are a mere mode of procedure or relief, involving an independent controversy with new or different parties. (*Buford v. Strother*, 10 Fed. Rep. 406; 3 McCrary, 253; see *Webber v. Humphreys*, 5 Dill. 223, Fed. Cas. No. 17326; *Chapman v. Barger*, 4 Dill. 557, Fed. Cas. No. 2603.) Where judgment was obtained against three defendants jointly, one of whom was a resident, to show cause why they should not be bound by the judgment. It is not a new action, but further proceedings in an old one. (*Fairchild v. Durand*, 8 Abb. Pr. 305.) If a

person has only an incidental interest growing out of the litigation, he cannot remove. (*Ellis v. Sisson*, 11 Fed. Rep. 353; 11 Biss. 187.) Where a bill was filed to correct a mistake in a proceeding, which mistake was made several years before, the suit was not ancillary to the original one. (*Pelzer Mfg. Co. v. Hamburg Bremen F. Ins. Co.*, 62 Fed. Rep. 1.) Because the court has possession of the property of a company in a suit to foreclose a mortgage, it does not necessarily have jurisdiction of another suit upon a paving tax. (*City of Lincoln v. Lincoln etc. Co.*, 77 Fed. Rep. 688.) Where a suit against a receiver, if originally brought in a Federal court would have been within its jurisdiction as being ancillary to the case in which the receiver was appointed, it may properly be removed to that court, if first brought in a State court. (*Carpenter v. Northern Pac. Ry. Co.*, 75 Fed. Rep. 850.) A proceeding under a State statute against the stockholders of a corporation after an execution against the corporation has been returned *nulla bona* is a suit and is not merely auxiliary. (*Lackawana Coal & Iron Co. v. Bates*, 56 Fed. Rep. 737.) The claim of a garnishee is ancillary and not removable. (*Pratt v. Albright*, 9 Fed. Rep. 636.)

Amount in controversy upon removal.—Under the Act of 1887 the amount in controversy must exceed two thousand dollars, exclusive of interest and costs, in order to justify removal. (*Ex parte Penn.*, 137 U. S. 451; *Weber v. Travellers' Ins. Co.*, 45 Fed. Rep. 657; *Chambers v. McDougal*, 42 Fed. Rep. 694.) The sum claimed in the declaration is the amount in dispute, in an action of damages, until shown otherwise in the record. (*Gordon v. Longest*, 16 Peters, 97; *Kanouse v. Martin*, 15 How. 198; *Hayward v. Nordberg Mfg. Co.*, 54 U. S. App. 639; 85 Fed. Rep. 4.) In determining whether the amount in dispute exceeds two thou-

sand dollars the principle to be applied is that, where the law gives no rule, the plaintiff's demand, unless colorable, must furnish one, but where the law does give the rule, the legal cause of action and not the plaintiff's demand must furnish one. (*Hayward v. Nordberg Mfg. Co.*, 54 U. S. App. 639; 85 Fed. Rep. 4.) In assumpsit the amount shown in the declaration is presumptively the amount in dispute (*People v. The Judges*, 2 Denio, 197); and an action that sounds altogether in damages may be removed, although the damages are uncertain. (*Muns v. Dupont*, 2 Wash. C. C. 463; Fed. Cas. No. 9931; contra, *Rush v. Cobbet*, 2 Yeates, 275.) The presumption that damages laid in the declaration is the amount in dispute is not conclusive (*Ladd v. Tudor*, 3 Wood. & M. 325; Fed. Cas. No. 7975; *People v. The Judges*, 2 Denio, 197; *Culver v. Crawford Co.*, 4 Dill. 239; Fed. Cas. No. 3468); and where the practice is not to file the declaration until after the return of the writ, the ad damnum in the writ is the prima facie sum claimed, or value in dispute (*Muns v. Dupont*, 2 Wash. C. C. 463; Fed. Cas. No. 9931; *Ladd v. Tudor*, 3 Wood. & M. 325; Fed. Cas. No. 7975), unless the declaration is inserted in the writ. (*Ladd v. Tudor*, 3 Wood. & M. 325; Fed. Cas. No. 7975.) If the declaration and the ad damnum varies, the State court may institute an inquiry as to the true amount. (*Ladd v. Tudor*, 3 Wood. & M. 325; Fed. Cas. No. 7975.) The affidavit of the petitioner is not conclusive of the amount in dispute. (*Rush v. Cobbet*, 2 Yeates, 275.) So where the suit is to prevent a corporation from entering into some enterprise, the value of the right must be shown to exceed the jurisdictional amount. (*Hatch v. Chic. R. I. & P. R. Co.*, 6 Blatchf. 105; Fed. Cas. No. 6204.) "In dispute" refers to the matters in dispute, though the claim may be incapable of proof, or be only in part well founded (*Kanouse v. Martin*, 15 How. 158); and

no reduction of the amount of the claim after removal will deprive the defendant of his rights. (*Roberts v. Nelson*, 8 Blatchf. 74; *Fed. Cas. No. 11907*; *Hayward v. Nordberg Mfg. Co.*, 54 U. S. App. 639; 85 *Fed. Rep.* 4.) The amount in controversy must be affirmatively shown. (*Keith v. Levi*, 2 *Fed. Rep.* 743; 1 *McCrary*, 343.) It is sufficient that it exceeds the jurisdictional amount, at the time when the removal is applied for, and interest may be regarded in determining the amount or value. (*McGinnity v. White*, 3 *Dill.* 350; *Fed. Cas. No. 8802*; *Bank of U. S. v. Danniel*, 12 *Peters*, 32; *Merril v. Petty*, 16 *Wall.* 338; *Clarkson v. Manson*, 18 *Blatchf.* 443; 4 *Fed. Rep.* 257.) A party cannot, by releasing part of his demand, oust the jurisdiction of the Federal court (*Wright v. Wells*, *Peters C. C.* 220; *Fed. Cas. No. 18101*; *Gordon v. Longest*, 16 *Peters*, 97; *Roberts v. Nelson*, 8 *Blatchf.* 74; *Fed. Cas. No. 11907*); but if the amendment is made before the petition for removal is filed removal cannot be had. (*Waite v. Phoenix Ins. Co.*, 62 *Fed. Rep.* 769.) In action sounding in tort, the damages laid constitute the amount in dispute. (*Hulsecamp v. Teel*, 2 *Dall.* 358; *Gordon v. Longest*, 16 *Pet.* 97; *Western Union Tel. Co. v. Levi*, 47 *Ind.* 552.) Where the right to removal has become perfect and complete, it cannot be defeated either by release, amendment or declaring for less than the jurisdictional amount. (*Kanouse v. Martin*, 15 *How.* 198; *Green v. Custard*, 23 *How.* 484; *Roberts v. Nelson*, 8 *Blatchf.* 74; *Fed. Cas. No. 11907*; *Wright v. Wells*, 1 *Peters C. C.* 220; *Fed. Cas. No. 18101*; contra, *Maine v. Gilman*, 11 *Fed. Rep.* 214.) Where the action is brought for less than the jurisdictional amount, and the answer pleads a counter-claim exceeding that amount, defendant is entitled to remove the whole suit. (*Clarkson v. Manson*, 18 *Blatchf.* 443; see *Aurora v. West*, 6 *Wall.* 139; *S. C.*, 25 *Ind.* 148; contra, *Falls Wire Mfg. Co. v.*

Broderick, 6 Fed. Rep. 654; 2 McCrary, 489.) If the complaint shows an amount in dispute exceeding two thousand dollars the court does not lose jurisdiction by subsequent stipulations reducing the amount. (Riggs v. Clark, 37 U. S. App. 626; 71 Fed. Rep. 560.) The right of applying creditors to come in and have their claims adjusted and allowed is a mere incident over which the court will necessarily exercise jurisdiction. (N. Y. Silk Mfg. Co. v. Second Nat. Bank, 10 Fed. Rep. 204.) Costs are not recoverable when the amount is less than the jurisdictional amount. (Brooks v. Phoenix Ins. Co., 16 Blatchf. 182; Fed. Cas. No. 1960.) If the declaration concludes with a prayer for ten thousand dollars, but on the face of the complaint only one thousand and eighteen dollars is involved, the suit is not removable. (Mayor of Baltimore v. Postal Tel. Cable Co., 62 Fed. Rep. 500.) If the judgment is for less than the jurisdictional amount, the court is not deprived of jurisdiction at the suggestion of plaintiff. (Eustis v. City of Henrietta, 41 U. S. App. 182; 74 Fed. Rep. 577.)

See, also, sec. 84, ante, and note.

Whether amount to be determined by setoff.—Courts are in direct conflict on the question whether or not, on a motion to remand, the amount in dispute is to be determined by the plaintiff's demand, or by the demand of the defendant, where he sets up a counterclaim. (West v. Aurora, 6 Wall. 139; Ryan v. Bindley, 1 Wall. 66; Hilton v. Dickinson, 108 U. S. 165; Bradstreet Co. v. Higgins, 112 U. S. 227; New York I. & P. Co. v. Milburn Gin & M. Co., 35 Fed. Rep. 225; Whelan v. New York etc. R. R. Co., 38 Fed. Rep. 15; Bennett v. Devine, 45 Fed. Rep. 705.) The amount in dispute to determine the right to remove a case from a State to a Federal court is fixed by plaintiff's claim alone, without re-

gard to defendant's counterclaim. (*La Montagne v. Harvey Lumber Co.*, 44 Fed. Rep. 645; *Gordon v. Longest*, 16 Pet. 97; *Falls Wire M. Co. v. Broderick*, 6 Fed. Rep. 654.) It has been held that where a counterclaim was interposed for damages for fraudulent representations in regard to the subject matter to an amount in excess of the jurisdictional amount, the suit was within the jurisdiction of the circuit court. (*Gold Washing etc. Co. v. Keyes*, 96 U. S. 199; *Woolridge v. McKenna*, 8 Fed. Rep. 650; *New Orleans etc. R. Co. v. Mississippi*, 102 U. S. 135. See also, *Clarkson v. Manson*, 4 Fed. Rep. 257.)

§ 97. **Removal of causes not involving constitution and laws of United States—Diverse citizenship.**—Any other suit of a civil nature, at law or in equity, of which the circuit courts of the United States are given jurisdiction by the preceding section, and which are now pending, or which may hereafter be brought in any State court, may be removed into the circuit court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. (Clause 2 of section 2 of Act of March 3, 1887, 24 U. S. Stats. 552, corrected August 13, 1888; 25 U. S. Stats. 443, amendatory to clause 2 of section 2 of the Act of March 3, 1875.)

Construction of section—Single controversy—Diverse citizenship.—In cases involving but a single controversy, where the jurisdiction of the court depends only upon the citizenship of the parties, the right of removal is governed solely by the above clause of the second section of the Act of 1887 and can be exercised only by nonresident defendants. (*County of Yuba v. Pioneer G. M. Co.*, 32 Fed. Rep.

183; *Western Union Tel. Co. v. Brown*, 32 Fed. Rep. 337.)

Suits of civil nature at law or in equity removable.—There is no difference in the method of determining whether a cause is removable between cases wherein the right depends on questions of fact and those where the right depends on questions of law (*Snohomish County v. Puget Sound Nat. Bank*, 31 Fed. Rep. 518). The nature of the action and not its form determines whether a cause is a “civil suit at law or equity.” (*Iowa v. Chicago etc. R. R. Co.*, 37 Fed. Rep. 497; *Ferguson v. Ross*, 38 Fed. Rep. 161; *State of Texas v. Day L. & C. Co.*, 41 Fed. Rep. 228; *State v. Tutty*, 41 Fed. Rep. 753.) The fact that the claim is legal, as distinguished from equitable has no bearing on the question of the right of removal. (*Ketchum v. Black River Lumber Co.*, 4 Fed. Rep. 139.) The right of removal is confined to civil actions (*Respublica v. Corbet*, 3 Dall. 467; *Green v. U. S.*, 9 Wall. 655; *State v. Grand Trunk Railway Co.*, 3 Fed. Rep. 887), and does not extend to criminal prosecutions. (*Risdon v. Cribbs*, 1 Dill. 181; Fed. Cas. No. 11860; *Green v. U. S.*, 9 Wall. 555; *State v. Grand Trunk R. Co.*, 3 Fed. Rep. 887.) The expression “common law” is used in contradistinction to equity and admiralty jurisdiction and includes all cases involving “legal” rights whether such rights arise from the settled principles of the common law or are given by statute. (*Brisenden v. Chamberlain*, 53 Fed. Rep. 307.) A suit to recover a penalty is not a suit of a “civil nature although declared by the State statute to be a “civil action.” (*State of Indiana v. Allegheny Oil Co.*, 85 Fed. Rep. 870.) An information in equity to restrain violations of a State statute forbidding trust combinations is not a civil action. (*Maloney v.*

American Tobacco Co., 72 Fed. Rep. 801.) An action of debt upon a recognizance by a State against an alien cannot be removed, as it is of a criminal nature. (*Respublica v. Corbet*, 3 Dall. 467.) An action of ejectment is removable (*Bigelow v. Forrest*, 9 Wall. 439; *Allin v. Robinson*, 1 Dill. 119; Fed. Cas. No. 249; *Ex parte Turner*, 3 Wall. Jr. 258; Fed. Cas. No. 14245; *Ex parte Girard*, 3 Wall. Jr. 263; Fed. Cas. No. 5457; *Torrey v. Beardsley*, 4 Wash. C. C. 242; Fed. Cas. No. 14104; *Gale v. Babcock*, 4 Wash. C. C. 344; Fed. Cas. No. 10163; *Martin v. Snowden*, 18 Gratt. 100), or an action of replevin. (*Beecher v. Gillett*, 1 Dill. 308; Fed. Cas. No. 1225; *Dennistoun v. Draper*, 5 Blatchf. 336; Fed. Cas. No. 3804.) An action commenced by attachment is removable, though defendant disputes the attachment only. (*Keith v. Levi*, 2 Fed. Rep. 743; 1 McCrary, 343.) So of a foreign attachment. (*Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031; *Ramsey v. Coolbaugh*, 13 Iowa, 164.) A case instituted to recover damages for death caused by a wrongful act is removable (*Railway Company v. Whitton*, 13 Wall. 270; *Davies v. Lathrop*, 12 Fed. Rep. 353); or an appeal to a State court from an assessment for land taken under the law of eminent domain (*Boom Co. v. Patterson*, 98 U. S. 403; *Warren v. Wisconsin V. R. Co.*, 6 Biss. 425; Fed. Cas. No. 17204); or a proceeding by strangers to an estate against a devisee to annul a will (*Gaines v. Fuentes*, 92 U. S. 10), or a claim on appeal against a public corporation. (*Gurnee v. Brunswick*, 1 Hughes, 270; Fed. Cas. No. 5872.) An action brought to establish a lost will is removable (*Southworth v. Adams*, 9 Biss. 521; 4 Fed. Rep. 1); or a suit to annul a will, or to recall a decree admitting it to probate (*Gaines v. Fuentes*, 92 U. S. 10); but a proceeding for the probate of a will (*In re Aspinwall's Est.*, 83 Fed. Rep. 851; *In re Cil-*

ley, 58 Fed. Rep. 977), or for the caveat of a will cannot be removed (*Hargroves v. Redd*, 43 Ga. 142); or a case on appeal for the establishment of claims against deceased (*Du Vivier v. Hopkins*, 116 Mass. 125; 17 Am. Rep. 141); but proceedings to determine whether the property of the deceased person is separate property are not removable (*In re Foley*, 80 Fed. Rep. 949). A mandamus is not removable on a plea which raises the issue of title to an office (*State v. Johnson*, 29 La Ann. 399); nor a mandamus to compel a railroad company to reconstruct an overhead street crossing (*State of Indiana v. Lake Erie & W. Ry. Co.*, 85 Fed. Rep. 1); nor is an action in the nature of a quo warranto. (*State v. Bowen*, 8 S. C. 382; see *Searl v. School District No. 2*, 124 U. S. 197; *Ames v. Kansas*, 111 U. S. 449; *McCollough v. Large*, 20 Fed. Rep. 309; *Colorado etc. R. Co. v. Jones*, 29 Fed. Rep. 193; *Cleveland etc. R. R. Co. v. McClung*, 119 U. S. 454; *Place v. State of Illinois*, 18 U. S. App. 724; 69 Fed. Rep. 481.) A proceeding to ascertain the compensation for land taken for public use is a suit at law, within the meaning of the constitution and the acts or Congress conferring jurisdiction on Federal courts. (*Searl v. School District*, 124 U. S. 197; and see *Mineral Range R. Co. v. Copper Co.*, 25 Fed. Rep. 515; *Railroad Co. v. Jones*, 29 Fed. Rep. 193.) A proceeding to enforce between parties a right to condemn lands, under the constitution and laws of a State, is a suit which may be removed (*Sugar Creek P. B. & P. C. R. Co. v. McKeel*, 75 Fed. Rep. 34). Federal courts have no jurisdiction, in suits removed from State courts, on the ground of diverse citizenship to enforce the provisions of the interstate commerce act, since in removed cases the jurisdiction of the Federal courts is no wider than that of the courts in which the cases were begun (*Swift v. Philadelphia*

& R. R. Co., 58 Fed. Rep. 858). Assessment proceedings for municipal improvement do not constitute a "suit" (In re City of Chicago, 64 Fed. Rep. 897). The decisions of a State supreme court that a special statutory proceeding is or is not a civil action, are not controlling on a Federal court (In re The Jarnecke Ditch, 69 Fed. Rep. 161; State of Indiana v. Allegheny Oil Co., 85 Fed. Rep. 870). A suit to impeach for fraud a decree rendered in the supreme court of the State is removable (Carver v. Jarvis-Conklin Mortgage Trust Co., 73 Fed. Rep. 9). Although a suit is an equitable suit and therefore removable it cannot be prosecuted as such, if there is an adequate remedy at law (Gombert v. Lyon, 80 Fed. Rep. 305).

What constitutes a controversy.—The statute contemplates a controversy in a suit, and not a mere suit in which there is no defense (Shumway v. Chicago & Iowa R. R. Co., 4 Fed. Rep. 385; Hutton v. Joseph Bancroft & Sons, 77 Fed. Rep. 481; Stanbrough v. Griffin, 52 Iowa, 112), as where default has been entered (Berrian v. Chetwood, 9 Fed. Rep. 678; McCallon v. Waterman, 1 Flippin, 651; Fed. Cas. No. 8675); but where nothing to contradict appears of record, the court will presume that there is a controversy between the parties. (Bailey v. Amer. Cent. Ins. Co., 13 The Reporter, 571.) In determining whether a suit involves a controversy between citizens of different States, the condition of the controversy when the petition is filed is alone to be considered. (Chicago, St. L. & N. O. R. Co. v. McComb, 17 Blatchf. 371; Fed. Cas. No. 2670.) A controversy is involved whenever any property or claim capable of pecuniary estimation is the subject of litigation, and is presented for judicial determination. (Gaines v. Fuentes, 92 U. S. 10; Lee

v. Lee, 8 Peters, 44.) Where a negligent act is one and indivisible, there arises but one cause of action, and the plaintiffs are joint parties in interest; there is not a controversy wholly between citizens of different States, so as to enable one of the plaintiffs, a nonresident, to remove the cause. (First Presb. Soc. v. Goodrich T. Co., 7 Fed. Rep. 257; 10 Biss. 312.) A distinct and separate interest is in no sense and under no circumstances connected with that of others. (Smith v. Rines, 2 Sum. 338; Fed. Cas. No. 13100.) A controversy between a nonresident bondholder on one side and the county authorities and taxpayers on the other is removable. (Harter Township v. Kernochan, 2 Morr. Trans. 235.) The right of removal does not exist after a stipulation filed in the State court admitting the claim. (Keith v. Levi, 2 Fed. Rep. 743; 1 McCrary, 343.) Where there is a controversy between citizens of different States, and the matter in dispute is sufficient, it is removable, although the case is not one arising under the constitution and laws or treaties of the United States (Low v. Wayne Bank, 14 Blatchf. 449; Fed. Cas. No. 8562); but the whole controversy must be removed. (Ellis v. Sisson, 11 Fed. Rep. 353; 11 Biss. 187.) It cannot be removed as to one and left pending as to another. (Chambers v. Holland, 11 Fed. Rep. 210; 3 McCrary, 538.) Nonresidents cannot be deprived of their right to have controversies with citizens of other States determined in the Federal courts, and the circuit court cannot relinquish its jurisdiction by transferring the case to the State court (Bates v. Days, 11 Fed. Rep. 529; 5 McCrary, 342); so as to attachment suits. (Keith v. Levi, 3 Fed. Rep. 743; 1 McCrary, 343.) Where a nonresident sued out attachments against a citizen of the State, which were followed by other attachments in the State court, the nonresident is entitled to re-

move. (*Bates v. Days*, 11 Fed. Rep. 529.) Where in one suit there are two distinct and separate controversies—one between citizens of the same State, and the other between citizens of different States—the Federal court has no jurisdiction. (*Iowa Home Co. v. Des Moines etc. R. Co.*, 8 Fed Rep. 97; 13 The Reporter, 385; distinguishing *Barney v. Latham*, 11 The Reporter, 721.)

Right of removal limited to suits within original jurisdiction of the Federal courts.—By section one of the act of 1887-1888 (25 U. S. Stats. 430), it is provided: "That the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same State claiming lands under grants of different States, or a controversy of citizens of a State and foreign States, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable by them." The right of removal is limited by section two (*supra*) of the same

act to such suits as the circuit court would have had jurisdiction if the action had been brought originally in the circuit court (Mexican National R. Co. v. Davidson, 157 U. S. 201; *In re Cilley*, 58 Fed. Rep. 977; *Reed v. Reed*, 31 Fed. Rep. 49; *County of Yuba v. Pioneer G. M. Co.*, 32 Fed. Rep. 183; *Laird v. Indemnity Mut. M. Assur. Co.*, 44 Fed. Rep. 712; but see *Cates v. Allen*, 149 U. S. 451). But the limitation of the jurisdiction by removal to such suits as the court would have had original jurisdiction of does not refer to the special regulations as to the district in which a cause of action may be commenced (*Amsinck v. Balderston*, 41 Fed. Rep. 641; *Cooley v. McArthur*, 35 Fed. Rep. 372; *Fales v. Chicago etc. Ry. Co.*, 32 Fed. Rep. 673).

In any State court.—The act does not apply to a suit brought in a Territorial court, although on the admission of such Territory as a State such suit passed into the jurisdiction of a State court (*Ames v. Colorado Cent. R. R. Co.*, 4 Dill. 251; Fed. Cas. No. 324). A cause may be removed from any State court, whether of limited or general jurisdiction if citizenship and amount are within the statute provisions (*Gaines v. Fuentes*, 92 U. S. 10; but see *Rathbone Oil Co. v. Rauch*, 5 W. Va. 79). The circuit court of the district within the Territorial limits of which the suit is pending is in the "proper district" (*Knowlton v. Congress & Empire S. Co.*, 13 Blatchf. 170; Fed. Cas. No. 7902.)

Citizenship.—Under this section there must be a controversy between citizens of different States when the petition is filed (*Chicago, St. L. & N. O. R. Co. v. McComb*, 17 Blatchf. 371; Fed. Cas. No. 2670; *Curtin v. Decker*, 5 Fed. Rep. 385; *Beebe v. Cheeney*, 11 The Reporter, 388; see *Removal Cases*, 100 U. S. 457; *Bruce v. Gibson*, 9 Fed. Rep. 540;

Kellam v. Keith, 144 U. S. 568; Merchant's Cotton Press & S. Co. v. Ins. Co. of North America, 151 U. S. 368; Foster v. Paragould S. E. R. Co., 74 Fed. Rep. 273; Grand Trunk Ry. Co. v. Twitchell, 21 U. S. App. 45; 59 Fed. Rep. 727); as well as at the commencement of the suit (Bruce v. Gibson, 9 Fed. Rep. 540; Akers v. Akers, 117 U. S. 197; Kellam v. Keith, 144 U. S. 568; Foster v. Paragould S. E. R. Co., 74 Fed. Rep. 273; Ruohs v. Jarvis Conklin Mortg. Co., 84 Fed. Rep. 513; Grand Trunk Ry. Co. v. Twitchell, 25 U. S. App. 45; 59 Fed. Rep. 727; Craswell v. Belanger, 15 U. S. App. 104; 56 Fed. Rep. 529; contra, Curtin v. Decker, 5 Fed. Rep. 385). While the diversity of citizenship must exist at the time the suit is filed, yet it is not necessary that the complaint show diversity of citizenship (City of Ysleta v. Canda, 67 Fed. Rep. 6; Texas & Pac. Ry. Co. v. Cody, 166 U. S. 606). All of the parties on one side must be of different citizenship from all the parties on the other side (Hyde v. Ruble, 3 Morr. Trans. 516; Blake v. McKim, 103 U. S. 336; The Removal Cases, 100 U. S. 457; Burke v. Flood, 6 Sawy. 220; 1 Fed. Rep. 541). Under act of 1887-1888 neither party need be a citizen of the State where suit is brought in removal cases (Long v. Long, 73 Fed. Rep. 369; Duncan v. Associated Press, 81 Fed. Rep. 417; Gregory v. Pike, 21 U. S. App. 658; 67 Fed. Rep. 837; Alley v. Edward Hines Lumber Co., 64 Fed. Rep. 903). A suit by an alien against a citizen who is a nonresident of the State in which the action is commenced is removable by the defendant on ground of diverse citizenship (Creagh v. Equitable Life Assur. Co., 83 Fed. Rep. 849; Stalkers v. Pullman's Palace Car Co., 81 Fed. Rep. 989). Under the first clause of the section there must be a single controversy in which all the parties on the moving side are necessary parties, when all must

unite (*Ruckman v. Palisades Land Co.*, 1 Fed. Rep. 367; *Ruble v. Hyde*, 3 Fed. Rep. 330; 1 *McCrary*, 513; *Smith v. McKay*, 4 Fed. Rep. 353; *Smith v. Horton*, 7 Fed. Rep. 270; *Removal Cases*, 100 U. S. 457; *Nat. Bank v. Dodge*, 2 Int. Rev. Rec. 304; *Maine v. Gilman*, 11 Fed. Rep. 214; *Chicago, St. L. & N. O. R. Co. v. McComb*, 17 Blatchf. 371; Fed. Cas. No. 2670); all except those who are merely nominal parties (*Waggener v. Cheek*, 2 Dill. 560; Fed. Cas. No. 17035; *Bixby v. Couse*, 8 Blatchf. 73; Fed. Cas. No. 1451; *Hutton v. Joseph Bancroft & Sons Co.*, 77 Fed. Rep. 481). The circuit court under this clause has no jurisdiction of a suit between a citizen of one State and citizens of the same State and another State (*Karns v. Atlantic & O. R. Co.*, 10 Fed. Rep. 309; *Security Co. v. Pratt*, 64 Fed. Rep. 405). It is not necessary that all the plaintiff's should be citizens of the State where suit is brought (*Alley v. Edward Hines Lumber Co.*, 64 Fed. Rep. 903). Nor of a suit brought by an alien against an alien (*Sawyer v. Switzerland M. Ins. Co.*, 14 Blatchf. 451; Fed. Cas. No. 12408; *Barrowcliffe v. La Caisse Generale*, 59 How. Pr. 131.) Under act of 1887-1888 defendants who are residents of the State in the courts of which the action is pending cannot remove the same into the circuit court of the United States (*Martin v. Snyder, Jr.*, 148 U. S. 663; *Wichita Nat. Bank v. Smith*, 36 U. S. App. 530; 72 Fed. Rep. 568). A suit by a citizen of one State brought in a State where part of the defendants reside, the other defendant being a citizen of a third State, is removable by the latter (*Boston Safe Deposit & T. Co. v. Mackey*, 70 Fed. Rep. 801). So a suit by two citizens of a State against several defendants, one a citizen of same State with plaintiffs, is not removable (*Hyde v. Ruble*, 104 U. S. 407); nor is it removable under the second clause, as there

is not a separate controversy between the resident plaintiffs and the nonresident defendants. (*Hyde v. Ruble*, 104 U. S. 407.) In a suit between a foreign citizen and citizens of various States, the removal was allowed where all but one of the defendants applied (*Cooke v. Seligman*, 7 Fed. Rep. 263; 17 Blatchf. 452). An unnaturalized Indian cannot remove a cause on the ground of diversity of citizenship (*Paul v. Clulsoquie*, 70 Fed. Rep. 401). A suit between a State on the one side and citizens on the other cannot be removed from a State to a Federal court on the ground of citizenship (*Stone v. South Carolina*, 117 U. S. 430; *State of Indiana v. Allegheny Oil Co.*, 85 Fed. Rep. 870; *State of Indiana v. Tolleston Club*, 53 Fed. Rep. 18; but see, contra, *Abeel v. Culberson*, 56 Fed. Rep. 329). If a cause is regularly removed from a State court to the circuit court, on motion of one or more of several defendants who have a right to have it removed as to him or them, and the circuit court takes jurisdiction, and all parties defendant appear, and no objection to the jurisdiction is made, and the cause proceeds to final judgment, the judgment remains in force and of binding effect upon all the parties, until judicially vacated, although it appears upon the face of the record that some of the defendants, who did join in the petition for removal, were citizens of the same State with the plaintiff. (*Des Moines Nav. etc. Co. v. Iowa Homestead Co.*, 123 U. S. 552.) If the original defendant has no right to remove a suit on the ground of diverse citizenship a substituted defendant does not have the right even though diversity of citizenship then exists (*Burnham v. First Nat. Bank*, 10 U. S. App. 485; 53 Fed. Rep. 163; *Cable v. Ellis*, 110 U. S. 389; *Houston etc. R. R. Co. v. Shirley*, 111 U. S. 358; *Olds Wagon Works v. Benedict*, 32 U. S. App. 116; 67 Fed. Rep.

1). A receiver of a railroad company being a citizen of another State may remove a suit against him in his official capacity, although the railroad company is itself a citizen of the State where suit is brought (*Brisden v. Chamberlain*, 53 Fed. Rep. 307). An averment of residence is not equivalent to an averment of citizenship (*Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App. 45; 59 Fed. Rep. 727; *Neel v. The Pennsylvania*, 157 U. S. 153). A "party defendant" is one who is named as such, and appears in the record as a defendant, at the time the right of removal exists (*Walker v. Richards*, 55 Fed. Rep. 129). The fact that one of the parties failed to answer but made default, does not place the parties in any different position with reference to the removal of a cause (*Wilson v. Oswego Township*, 151 U. S. 56). The fact that a party subsequently ceases to take an interest in a case does not deprive the court of jurisdiction acquired by reason of diversity of citizenship (*Washington & I. R. Co. v. Coeur D'Alene R. & Nav. Co.*, 160 U. S. 77). The citizenship of parties is that of the parties as persons and not an official citizenship acquired in a representative capacity (*Wilson v. Smith*, 66 Fed. Rep. 81). Only parties to the record have the right to remove a cause (*Bertha Zinc & Min. Co. v. Carico*, 61 Fed. Rep. 132).

Citizenship of corporation.—It is a well settled rule that corporations, for all purposes of Federal jurisdiction, are conclusively considered citizens of the State which created them (*National Typographic Co. v. New York T. Co.*, 44 Fed. Rep. 711; *Myers v. Murray*, 43 Fed. Rep. 695). The same rule applies to public municipal corporations, and the right to remove exists where a county is a party, and the other party is a citizen of another State. (*Cowles v. Mercer Co.*, 7 Wall. 118; *City of Ysleta v. Canda*,

67 Fed. Rep. 6.) It does not become a citizen of a State other than the one under whose laws it is organized, merely because the State confers on it the privilege to build a road and purchase and hold real estate (*Williams v. Missouri K. & T. R. Co.*, 3 Dill. 267; *Fed. Cas. No. 17728*; *Dennistoun v. N. Y. & H. R. R. Co.*, 1 Hilt. 62); or under whose laws it enters to operate its road (*Williams v. Missouri, K. & T. R. Co.*, 3 Dill. 267; *Fed. Cas. No. 17728*; *Chapman v. Alabama G. S. R. Co.*, 59 Fed. Rep. 370); so a license to a railroad of a right of way does not confer citizenship (*Callahan v. Louisville etc. R. Co.*, 11 Fed. Rep. 536; *Martin v. Baltimore & O. Ry. Co.*, 151 U. S. 673); nor is its citizenship changed by leasing a road in another State. The right to remove is not lost by the fact that it has an office in the State for the transaction of business. (*Hatch v. Chicago R. I. & P. R. Co.*, 6 Blatchf. 105; *Fed. Cas. No. 6204*.) It cannot be deprived of its right of removal by State legislation (*Railway Co. v. Whitton*, 13 Wall. 270); nor is it affected by State legislation authorizing service of process on its agent. (*W. U. Tel. Co. v. Dickinson*, 40 Ind. 444; 13 Am. Rep. 295; *Hobbs v. Manhattan Ins. Co.*, 56 Me. 417; 96 Am. Dec. 472; *Morton v. Mut. L. Ins. Co.*, 105 Mass. 141; 7 Am. Rep. 505.) A State legislature may exclude a foreign corporation, and the means of enforcing such exclusion, or the motives of such action, will not be inquired into (*Doyle v. Continental Insurance Co.*, 94 U. S. 535; but see *Hartford Fire Ins. Co. v. Doyle*, 6 Biss. 46; *Fed. Cas. No. 6160*); but a general waiver of the right to remove, in pursuance of a State statute, as a condition for transacting business in the State, is void (*Insurance Co. v. Morse*, 20 Wall. 445; *Railway P. A. Co. v. Pierce*, 27 Ohio St. 155; *Baltimore & O. R. Co. v. Carey*, 28 Ohio St. 208; contra, *N. Y. Life Ins. Co. v. Best*, 23 Ohio St. 105);

so a statute which allows a foreign corporation to do business in the State only on condition that it will agree not to remove suits, is unconstitutional, and such agreement is void. (*Insurance Co. v. Morse*, 20 Wall. 445; *Metropolitan L. Ins. Co. v. Harper*, 3 Hughes, 260; *Fed. Cas. No. 9505*.) A State law requiring a foreign corporation to comply with certain regulations does not make it a citizen (*N. Y. Piano Co. v. N. H. Steamboat Co.*, 2 Abb. Pr. N. S. 357; *Railroad Co. v. Koontz*, 3 Morr. Trans. 34); but if the effect of the State legislation be to adopt the corporation, it becomes for the purposes of jurisdiction a corporation of that State, and it cannot remove a cause brought in that State (*Uphoff v. Chicago, St. L. & N. O. R. Co.*, 5 Fed. Rep. 545; *Johnson v. Phila. W. & B. R. Co.*, 9 Fed. Rep. 6; *Martin v. Baltimore & O. Ry. Co.*, 151 U. S. 673; and see *Chicago & W. I. R. Co. v. L. S. & M. S. R. Co.*, 5 Fed. Rep. 19; *Bradley v. Ohio R. & C. Ry. Co.*, 78 Fed. Rep. 387); it is a citizen of that State, although it transacts business in the State where suit is brought (*Stevens v. Phoenix Ins. Co.*, 41 N. Y. 149; *Holden v. Putnam Ins. Co.*, 46 N. Y. 1; 7 Am. Rep. 287; *Kranshaar v. N. H. Steamboat Co.*, 7 Robt. 357), and although some of the stockholders are citizens of the State where suit is brought (*Wheeldon v. Railroad Co.*, 1 Grant Cas. 420; *Arapahoe Co. v. Kansas P. R. Co.*, 4 Dill. 277; *Fed. Cas. No. 502*); as a foreign corporation and all its nonresident corporators may remove the cause. (*Rosenfeld v. Adams Exp. Co.*, 21 La. Ann. 233.) Where corporations entered into a contract to be performed under the laws of another State, which contract was by that State declared void, the cause cannot be removed in a State where such contract was declared valid. (*Wiggins Ferry Co. v. Chicago & A. R. Co.*, 11 Fed. Rep. 382; 3 McCrary. 609.) If a corpora-

tion is instituted under the laws of two States a case instituted against it by a citizen of one of the States in a suit brought in the other may be removed. (*Allegheny Co. v. Cleveland & P. R. Co.*, 51 Pa. St. 228; 88 Am. Dec. 579; *Railway Co. v. Whitton*, 13 Wall. 270.) Where the same persons, by the same corporate name, have been incorporated with the same powers and the same objects by another State, such an act must be construed as a license enlarging the field of its operations, but shorn of none of its qualities as a corporation of another State, and it is privileged to elect to sue in the United States courts. (*Missouri, K. & T. R. Co. v. Texas & St. L. R. Co.*, 10 Fed. Rep. 497; 4 Woods, 360.) But where several railroad corporations organized in several States consolidate, and one of them is sued in the State in which it was organized by the name of the consolidated roads, the other companies which exist out of the State cannot remove the cause. (*Chicago & W. I. R. Co. v. Lake Shore & M. S. R. Co.*, 11 The Reporter, 323.) So a suit commenced in a State court by a citizen of the State which created the company cannot remove, though it be a consolidated company chartered by several States (*Uphoff v. Chicago, St. L. & N. O. R. Co.*, 5 Fed. Rep. 545); and one of a consolidated corporation created under the laws of another State cannot go into that State and have the cause removed. (*C. & W. I. R. Co. v. L. S. & M. S. R. Co.*, 5 Fed. Rep. 19; 10 Biss. 122.) A consolidated railroad formed of three railroads, chartered by different States, cannot remove on the ground that the charters obtained from other States gave it a foreign citizenship (*Johnson v. Philadelphia W. & B. R. Co.*, 9 Fed. Rep. 6; see generally *Ohio & M. R. Co. v. Wheeler*, 1 Black, 286; *Balt. & R. Co. v. Harris*, 12 Wall. 65; *Chicago & N. W. R. Co. v. Whitten*, 13 Wall. 270; *Williams v. Missouri*

K. & T. R. Co., 3 Dill. 267; Fed. Cas. No. 17728; Marshall v. Balt. & O. R. Co., 16 How. 314; Chicago & N. W. R. Co. v. Chicago & P. R. Co., 6 Biss. 219; Fed. Cas. No. 2365; Minot v. Phila. & W. B. R. Co., 2 Abb. U. S. 323; Fed. Cas. No. 9645); but if a corporation is chartered by foreign countries, it may remove a cause as an alien. (Terry v. Ins. Co., 3 Dill. 408; Fed. Cas. No. 13838; see Fisk v. Chicago etc. R. Co., 53 Barb. 472; King of Spain v. Oliver, 2 Wash. C. C. 420; Fed. Cas. No. 7814.) A corporation of another State may remove a cause commenced by attachment, although the action could not be commenced by original process in the circuit court. (Bliven v. New England Screw Co., 3 Blatchf. 111; Fed. Cas. No. 1550; Barney v. Globe Bank, 5 Blatchf. 107; Fed. Cas. No. 1031; Sayles v. Northwestern Ins. Co., 2 Curt. 212; Fed. Cas. No. 12421.) So an insolvent corporation, whose property is in the hands of a receiver of a State court, may appear in such court and remove the cause where attachments are filed on its property. (Second Nat. Bank v. N. Y. Silk Manuf. Co., 11 Fed. Rep. 532.) If a foreign corporation appears and removes a suit, it is too late to except to the process by which it is brought into the State court, or that not being an inhabitant, or found within the district, the suit could not have been commenced in this court. (Sayles v. Northwestern Ins. Co., 2 Curt. 212; Fed. Cas. No. 12421.) Where a citizen of the State joined with a foreign insurance company to recover from a nonresident corporation for a total loss by negligence, the suit is not removable. (First Pres. Soc. v. Goodrich T. Co., 7 Fed. Rep. 257; 10 Biss. 312.) Under the act of 1887-1888 a suit brought by alien plaintiffs against a corporation defendant not chartered by the State in which suit is brought may be removed by the defendants (Sherwood v. Newport News & M. V. Co.,

55 Fed. Rep. 1). On the question of the removal of a cause to the Federal court, a railroad company must not be considered a resident of the same place as a foreign corporation, by being under a perpetual lease thereto (*Crane v. Chicago & N. W. Ry. Co.*, 20 Fed. Rep. 402). A corporation formed by the consolidation of corporations of different States is, for purposes of the jurisdiction of the Federal court, a citizen of both States, and cannot, when sued in one of them, claim that it is likewise a citizen of another, and therefore, entitled to remove the cause to the Federal court, on the ground of citizenship in such other State (*Horn v. Boston & M. R. Co.*, 18 Fed. Rep. 50; *Moore v. Chicago & St. P. Ry. Co.*, 21 Fed. Rep. 817; *Pacific Ry. Co. v. Missouri Pac. Ry. Co.*, 23 Fed. Rep. 565; *Cohn v. Louisville N. O. & T. R. Co.*, 39 Fed. Rep. 227). Consolidation with a domestic corporation after suit brought will not alter the right of the foreign corporation to remove the cause to a Federal court (*Chicago I. & W. P. R. Co. v. Minnesota & N. W. R. Co.*, 29 Fed. Rep. 337). A foreign corporation, even if it is to be regarded as a resident of the State in which it is sued by a citizen of that State, is not prevented from removing the suit to the Federal court on the ground that it is a foreign corporation (*Purcell v. British Land & Mortg. Co.*, 42 Fed. Rep. 465; *Loomis v. New York & C. Gas. Coal Co.*, 33 Fed. Rep. 353; *Wilson v. Western Union Tel. Co.*, 34 Fed. Rep. 561). An action against a bank in plaintiff's State and against two residents of other States, with whom it is alleged the bank deposited certain railroad bonds in suit, is a suit between citizens of different States, and removable (*Wilson v. Union Sav. Assoc.*, 30 Fed. Rep. 521).

Removal of suits by assignees.—A suit may be removed although it is brought by the assignee of a chose in action (*Bushnell v. Kennedy*, 9 Wall. 387; *Lexington v. Butler*, 14 Wall. 282; *Barclay v. Commissioners*, 1 Woods, 254; Fed. Cas. No. 977; but see *Ayers v. Western R. R. Corp.*, 32 How. Pr. 351; *New Orleans C. & B. Co. v. Recorder*, 27 La. Ann. 291; *Colcord v. Wall*, 2 Miles, 459), in his own name and in pursuance of a State law (*Thompson v. Railroad Cos.*, 6 Wall. 134; but see *Anderson v. Manuf. Bank*, 14 Abb. Pr. 436); or by the assignee of a contract to recover damages for its breach (*Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031); but a defendant cannot acquire the right to a removal by the purchase of the interests of his codefendants (*Temple v. Smith*, 4 Fed. Rep. 392); but a defendant may remove a suit brought against him by an assignee, the assignee being the citizen of another State, though the assignor in whose favor the debt was contracted belongs to the same State as defendant. (*Waterbury v. City of Laredo*, 3 Woods, 371; Fed. Cas. No. 17252; *Leutz v. Butterfield*, 7 Daly, 24.) Where a citizen transfers mortgage notes to a foreigner, for the purpose of giving jurisdiction, not accompanied with an agreement for a retransfer, the circuit court will take jurisdiction of the cause when removed (*Marion v. Ellis*, 10 Fed. Rep. 410); and so as to the transfer of lands (*De Laveaga v. Williams*, 5 Sawy. 573; Fed. Cas. No. 3759); and the fact that the motive was to bring the suit will not impair the right of action. (*Foot v. Town of Hancock*, 15 Blatchf. 343; Fed. Cas. No. 4911.) A bona fide conveyance of property in controversy, for the express purpose of conferring jurisdiction, is no ground for remanding a cause to the State court. (*Hoyt v. Wright*, 4 Fed. Rep. 168; 2 McCrary, 222.) So the right to sue is not invalidated by the fact that the note was transferred for

the purpose of giving the court jurisdiction (*Lanning v. Lockett*, 11 Fed. Rep. 814; 4 Woods, 455; S. C., 10 Fed. Rep. 451); but a transfer mala fide in one State to the citizens of another will not enable the grantee to maintain ejectment in the United States court. (*Greenwalt v. Tucker*, 10 Fed. Rep. 884; 3 McCrary, 450.) The circuit court has no jurisdiction where the nominal parties have been made parties collusively to bring the controversy within its jurisdiction. (*Marion v. Ellis*, 9 Fed. Rep. 367; see *Hawes v. Contra Costa W. Co.*, 11 Fed. Rep. 93, note.) Where parties convey land to a stranger, a citizen of another State, without his knowledge and without consideration, for the purpose of creating jurisdiction in the United States courts, the transaction was only colorable and collusive, and the suit must be dismissed. (*Coffin v. Haggin*, 11 Fed. Rep. 219; 7 Sawy. 509.) A plaintiff brought into the controversy by assignment, merely that he may acquire a standing to enable him to prosecute in the interest of the original party, is improperly and collusively made a party to the suit. (*Fountain v. Town of Angelica*, 12 Fed. Rep. 8; 20 Blatchf. 348.) The sections of the Act of March 3, 1875, should be construed together, and the remedy should not be allowed where the plaintiff is assignee, unless the assignee might have brought suit in the Federal court. (*Berger v. Douglas Co.*, 5 Fed. Rep. 23; but see *Lexington v. Butler*, 14 Wall. 282; *Bushnell v. Kennedy*, 9 Wall. 387; *Green v. Custard*, 23 How. 484; but see *Clafin v. Commonwealth Ins. Co.*, 110 U. S. 81; *Bell v. Noonan*, 19 Fed. Rep. 229.) Citizenship of the party to the contract and not his assignee determines the question of right to removal of the cause. (*Dimmock v. Doolittle*, 29 Fed. Rep. 545.) A case is not removable because a colorable assignment has been made to give a State court exclusive jurisdiction. (*Leather Mfrs. Bank v. Cooper*, 120 U.

S. 778; see generally, *Jewett v. Bradford Sav. Bank & T. Co.*, 4 Fed. Rep. 801; *McNulty v. Connecticut Mutual L. Ins. Co.*, 46 Fed. Rep. 305; *Bank of British North America v. Barling*, 46 Fed. Rep. 357.)

Suits against aliens.—If an alien has merely filed his declaration of intention to become a citizen, he is still an alien. (*Lanz v. Randall*, 4 Dill. 425; Fed. Cas. No. 8080; *Orosco v. Gagliardo*, 22 Cal. 83.) Resident unnaturalized foreigners may remove causes to the Federal court, although by State laws they may vote at elections or hold office under the State government. (*Lanz v. Randall*, 4 Dill. 425; Fed. Cas. No. 8080; *D'Wolf v. Rabaud*, 1 Peters, 476; S. C., 1 Paine, 580; Fed. Cas. No. 11519; *Case v. Clarke*, 5 Mason, 70; Fed. Cas. No. 2490; *Cooper v. Galbraith*, 3 Wash. C. C. 546; Fed. Cas. No. 3193; *Shelton v. Tiffin*, 6 How. 163.) A foreign corporation is an alien and may remove the suit. (*Terry v. Imperial F. Ins. Co.*, 3 Dill. 468; Fed. Cas. No. 13838.) A suit brought by a citizen of another State against a citizen of England is removable. (*Eureka Consol. M. Co. v. The Richmond Consol. M. Co.*, 2 Fed. Rep. 829; 6 Sawy. 472.) To give the right to a removal, all on one side must be citizens, and all on the other side aliens. (*Dannmeyer v. Coleman*, 11 Fed. Rep. 97; 8 Sawy. 51.) An alien defendant may remove an action brought against him by the State. (*State v. Lewis*, 12 Fed. Rep. 1; contra, *New Jersey v. Babcock*, 4 Wash. C. C. 344; Fed. Cas. No. 10163; *Resp. v. Corbet*, 3 Dall. 467.) The jurisdiction of the circuit courts of suits by citizens against aliens is not defeated by the fact that the defendant is the consul of a foreign government. (*Bors v. Preston*, 111 U. S. 252.) A suit by an alien against a nonresident person or corporation is removable on application of defendant. (*Stalker v. Pullman's Palace Car Co.*, 81 Fed. Rep. 989.)

Necessary parties.--Where redemption of a mortgage is sought, and the land is held in severalty, all holders are necessary parties. (*Miller v. Finn*, 1 Neb. 254.) So where a bill is filed against a mortgagor and others to obtain an accounting, the cause cannot be removed on application of one of the parties joined with the mortgagor (*Upton v. New Jersey S. R. Co.*, 25 N. J. Eq. 372); and where a foreclosure suit is filed against a mortgagor and a subsequent mortgagee, the latter cannot remove the cause. (*Donahue v. Mariposa L. & M. Co.*, 5 Sawy. 163; *Fed. Cas. No. 3989*.) An action to enforce a joint liability in equity cannot be removed. (*Yulee v. Vose*, 99 U. S. 539.) If a bill to quiet title is filed against several persons as tenants in common, one of them may remove it (*Field v. Lownsdale*, *Deady*, 288; *Fed. Cas. No. 4769*); and if one partner only is served with process, he may remove the cause (*Wormser v. Dahلمان*, 57 How. Pr. 286; *Fed. Cas. No. 18048*), but a suit against partners to recover the value of goods sold is not susceptible of division. (*Mervin v. Wexel*, 49 How. Pr. 115; contra, *McGinnity v. White*, 3 Dill. 350; *Fed. Cas. No. 8802*.) A foreign landlord appearing as codefendant in ejectment cannot remove the cause unless the tenant who is a citizen of the State disclaims all interest in the premises. (*Allin v. Robinson*, 1 Dill. 119; *Fed. Cas. No. 249*.) So if the tenant is made defendant in ejectment, the landlord, citizen of another State, cannot remove the cause. (*Ex parte Turner*, 3 Wall. Jr. 258; *Fed. Cas. No. 14245*; *Ex parte Girard*, 3 Wall. Jr. 263; *Fed. Cas. No. 5457*; *Beardsley v. Torrey*, 4 Wash. C. C. 286; *Fed. Cas. No. 1190*; but see *Jackson v. Styles*, 4 Johns. 493.) If a person files an interpleader, the cause cannot be removed without the presence of both defendants. (*George v. Pilcher*, 28 Gratt. 299; 26 Am. Rep. 350.) An action of tort against several defendants for a conspiracy cannot

be removed by part of them under the Acts of 1866 and 1867. (Ex parte Andrews, 40 Ala. 639; *Smith v. Rines*, 2 Sum. 338; Fed. Cas. No. 13100), nor under the Act of 1875. (*Van Brunt v. Corbin*, 14 Blatchf. 496; Fed. Cas. No. 16832.) If a partner brings an action on account against his copartner and another, the case is not susceptible of a division. (*Levy v. O'Neil*, 14 Abb. Pr. N. S. 63.) An attachment proceeding is of such a nature that the debtor and garnishee cannot be severed (*Weeks v. Billings*, 55 N. H. 371), the garnishee not being a defendant within the meaning of the statute. (*Weeks v. Billings*, 55 N. H. 371.) Where a debtor and trustee for the sale of land are defendants, the debtor alone cannot remove, as the trustee is a necessary party. (*Gardner v. Brown*, 21 Wall. 36.) So in an attachment proceeding the debtor and garnishee cannot be severed. (*Weeks v. Billings*, 55 N. H. 371.) Where a corporation, a trustee, and the bondholders are defendants, the trustee and one of the bondholders cannot have the case removed as to them. (*Cape Girardeau R. Co. v. Winston*, 4 Cent. L. J. 127; Fed. Cas. No. 2390; see *Gardner v. Brown*, 21 Wall. 36.) A controversy concerning the probate of a will cannot be removed on a petition of part of the contestants. (*In re Fraser*, 10 Chic. L. N. 390; Fed. Cas. No. 5068.) So one of several opposing claimants cannot remove a cause brought by an executor for settlement of his trust and disposition of the estate. (Ex parte *Grimball*, 8 Cent. L. J. 151.) So a single creditor or legatee cannot remove the cause where numerous creditors and legatees hold conflicting claims. (*Peters v. Peters*, 41 Ga. 242; *Burts v. Loyd*, 45 Ga. 104; 12 Am. Rep. 574.) So a citizen of another State, who makes himself a party to a cause where a widow files a petition against an administrator for her support, cannot remove without the presence of the administrator. (*Peters v. Peters*, 41

Ga. 242.) A trustee in whom the legal title is vested is not a merely nominal party. (*Dunn v. Waggoner*, 3 Yerg. 59.) So where a trustee, a nonresident, institutes the suit, the cestui que trust, a citizen of the State, cannot remove. (*Mead v. Walker*, 15 Wis. 499; *Geyer v. Hancock Ins. Co.*, 50 N. H. 224; 9 Am. Rep. 185.) The creditor cannot remove the case if a trustee files a bill to enjoin him and the sheriff from levying execution on the trust property. (*Nye v. Nightingale*, 6 R. I. 439.)

Jurisdiction does not depend upon citizenship of formal or nominal parties.—The citizenship of formal parties with no real interest in the controversy does not affect the jurisdiction. (Removal Cases, 100 U. S. 457; *Barney v. Latham*, 103 U. S. 205; *Harter v. Kernochan*, 103 U. S. 562; *Wormley v. Wormley*, 8 Wheat. 421; *Taylor v. Holmes*, 14 Fed. Rep. 499; *Brown v. Nelson*, 43 Fed. Rep. 614; *Hazard v. Robinson*, 21 Fed. Rep. 193; *Wood v. Davis*, 18 How. 467; *Shattuck v. North British & M. I. Co.*, 19 U. S. App. 215; 58 Fed. Rep. 609; *Arrowsmith v. Nashville & D. R. Co.*, 57 Fed. Rep. 165; *Reeves v. Corning*, 51 Fed. Rep. 774; *Myers v. Nelson*, 43 Fed. Rep. 695; *Nelson v. Hennessy*, 38 Fed. Rep. 113; *Ferguson v. Ross*, 31 Fed. Rep. 161; *May v. St. John*, 38 Fed. Rep. 770.) So if a citizen of the State where suit is brought is not a necessary party, and his presence is not essential, the nonresident defendant may remove, although the former does not unite in the petition (*Hatch v. Chicago, R. I. & P. R. Co.*, 6 Blatchf. 105; Fed. Cas. No. 6204; *Ex parte Girard*, 3 Wall. Jr. 263; Fed. Cas. No. 5457; *Hutton v. Joseph Bancroft & Sons Co.*, 77 Fed. Rep. 481; *Chamberlain v. New York L. E. & W. R. Co.*, 71 Fed. Rep. 636; *American Nat. Bank v. National Benefit & Casualty Co.*, 70 Fed. Rep. 420; *New York Const. Co. v. Simon*, 53 Fed. Rep. 1; *Garrard v.*

Silver Peak Mines, 76 Fed. Rep. 1; State of Missouri v. Alt, 73 Fed. Rep. 302; Reeves v. Corning, 51 Fed. Rep. 774; Henderson v. Caball, 43 Fed. Rep. 257; and where all the defendants join but one, and that one is an unnecessary party, the cause may be removed. (Cooke v. Seligman, 7 Fed. Rep. 263; 17 Blatchf. 452.) The right to a removal is not affected by the fact that a defendant, a citizen of the same State, is a proper but not an indispensable party to a separable controversy. (Barney v. Latham, 2 Morr. Trans. 638.) Where the real party to a controversy is clearly entitled to have his rights passed upon by the courts of the United States, he is entitled to remove, although the nominal party has no such right. (Cohens v. Virginia, 6 Wheat. 264.) The Federal court does not acquire jurisdiction because of the citizenship of the person suing as next friend of a non compos mentis, such next friend being only a nominal party. (Wiggins v. Bethume, 29 Fed. Rep. 51.) As a general rule, trustees and executors are to be regarded as active parties. (Goodnow v. Litchfield, 4 McCrary, 215; Thayer v. Life Association, 112 U. S. 717.) The citizenship in such cases of the representative in his individual capacity controls. (Continental L. Ins. Co. v. Rhoads, 119 U. S. 237; Whitman v. Hubbell, 24 Blatchf. 240; 30 Fed. Rep. 81.) So where a landlord, the real owner, assumes the defense, he makes himself a party, and being the real defendant may remove the cause if he be a citizen of a State other than that of the plaintiff. (Greene v. Klinger, 10 Fed. Rep. 689.) And when a tenant in possession disclaims title she may have her landlord substituted as defendant. (State v. Lewis, 12 Fed. Rep. 1); but it is otherwise if the tenant does not disclaim, (Allin v. Robinson, 1 Dill. 119; Fed. Cas. No. 249.) And an alien, a real party in interest, may remove a suit brought against him by the State.

(State v. Lewis, 12 Fed. Rep. 1; State v. Texas Pac. R. R. Co., 3 Woods, 308; Fed. Cas. No. 13848.) Though the nominal party be a party on the record, yet it will not defeat the right of the real party in interest to remove and have the cause determined in the Federal court. (Greene v. Klinger, 10 Fed. Rep. 689; Barney v. Latham, 103 U. S. 205.) So in ejectment the sole owner may remove, although his grantor, a citizen of the same State, as plaintiff, is a party. (Calloway v. Ore Knob Co., 74 N. C. 200.) If the only relief prayed in a suit against a corporation and its officers is by injunction, the officers are merely nominal parties (Hatch v. Chicago R. I. & P. R. Co., 6 Blatchf. 105; Fed. Cas. No. 6204); so of a suit to enjoin the execution of a lease. (Pond v. Sibley, 7 Fed. Rep. 129; 19 Blatchf. 189; Nat. Bank of Lyndon v. Wells River Mfg. Co., 7 Fed. Rep. 750.) They are not such necessary parties to a suit involving title to lands as to prevent a removal. (Nat. Bank of Lyndon v. Wells River Mfg. Co., 7 Fed. Rep. 750; Pond v. Sibley, 7 Fed. Rep. 129; 19 Blatchf. 189.) Officers joined as defendants in equity, but as to whom no relief is prayed, are nominal parties, such as will not defeat the right to a removal. (Fisk v. Chicago R. I. & P. R. Co., 6 Blatchf. 105; Fed. Cas. No. 6204.) The court will not allow the joinder of parties having only equitable claims, to defeat the right of removal. (Over v. Lake Erie & W. R. Co., 63 Fed. Rep. 34.) Where a nonresident stockholder of a banking corporation does not unite in the application, the corporation cannot be heard to complain; the objection can only be assigned as error to the party himself. (Danville Bk. & T. Co. v. Parks, 88 Ill. 179.) State and county officers are not necessary parties to a controversy relating to the validity of bonds. (Town of Aroma v. Auditor, 2 Fed. Rep. 33.) Citizenship of nominal parties, or of aliens who

do not constitute the entire party on one side, will not give a right to removal (*Hervey v. Illinois etc. R. Co.*, 7 Biss. 103; *Fed. Cas. No. 6434*; *Arapahoe Co. v. Kansas & P. R. Co.*, 4 Dill. 277; *Fed. Cas. No. 502*); but the fact that defendants are named who have not been served, or have not appeared, who are citizens of the same State as plaintiff, will not defeat the right to a removal. (*Ex parte Girard*, 3 Wall. Jr. 263; *Fed. Cas. No. 5457*.) A party legally liable is neither a nominal nor sham party merely because he is pecuniarily irresponsible. (*Deere, Wells & Co. v. Chicago M. & St. P. Ry. Co.*, 85 Fed. Rep. 876.) A substituted party comes into a suit subject to all the disabilities of him whose place he takes, so far as concerns the right of removal in the cause. (*Cable v. Ellis*, 110 U. S. 389; *Houston etc. R. Co. v. Shirley*, 111 U. S. 358; *Jefferson v. Driver*, 117 U. S. 272. And see *Stewart v. Dunham*, 115 U. S. 61; *Phelps v. Oaks*, 117 U. S. 236; *Burnham v. First Nat. Bank*, 10 U. S. App. 485; 53 Fed. Rep. 163.) After one trial of the issue the substitution of an intervenor for a merely nominal party without changing the issue will not authorize removal. (*Hakes v. Burns*, 40 Fed. Rep. 33.)

Fraudulent joinder of parties.—It is not in the discretion of the pleader to arrange parties in the suit so as to confer jurisdiction. Such arrangement would be a collusive joinder. (*Bland v. Fleeman*, 29 Fed. Rep. 669.) If a person has a cause of action on which he may properly sue either one or two parties, and he chooses to sue both, he may do so, though his motive in doing so is to prevent a removal to a Federal court. (*Deere, Wells & Co. v. Chicago M. & St. P. R. R. Co.*, 85 Fed. Rep. 876.) In order that joinder of defendant be regarded as fraudulently made for the purpose of avoiding the jurisdiction of the Federal

court, it must appear by allegation and proof not only that it was made for that purpose, but also that the averments upon which the right to join such defendant is claimed are so unfounded in fact and incapable of proof as to justify the inference that they were not made in good faith with the intention of proving them (*Warax v. Cincinnati N. O. & T. P. R. Co.*, 72 Fed. Rep. 637; *Hukill v. Marysville & B. S. Ry. Co.*, 72 Fed. Rep. 745); the proof must be circumstantial and detailed. (*Landers v. Felton*, 73 Fed. Rep. 311.) The dismissal of a suit after removal and the bringing of another suit immediately against the same company, joining merely nominal parties in the latter suit, will be held to have been merely to prevent removal. (*Powers v. Chesapeake & O. Ry. Co.*, 65 Fed. Rep. 129.) A suit for the benefit of a county and against citizens of the State brought in the name of an alien, so as to create a case cognizable, must be dismissed as collusive. (*Cashman v. Amador Canal Co.* 118 U. S. 58.) To justify a dismissal on the ground that a note was transferred to give jurisdiction it must appear that the object was to create a case cognizable by such court. (*Lanier v. Nash*, 121 U. S. 404.) If parties are joined to prevent removal, but are dismissed before trial, the remaining defendants may remove the cause, even though the statutory time for removal is passed. (*Powers v. Chesapeake & O. R. R. Co.*, 65 Fed. Rep. 129.) Issue may be joined upon the question of fraudulent joinder when that fact is set out in the petition for removal. (*Durkee v. Illinois Cent. Ry. Co.*, 81 Fed. Rep. 1.) Where the transfer from the real party in interest is colorable merely, the case will be dismissed. (*Norton v. European & N. A. Ry. Co.*, 32 Fed. Rep. 865.)

Court will arrange parties according to real interest.—For the purpose of removing a suit, the court has the power to rearrange the parties and place them

on different sides according to their actual interests (*Evers v. Watson*, 156 U. S. 527; *Wilson v. Oswego Township*, 151 U. S. 56; *Reeves v. Corning*, 51 Fed. Rep. 774; *Bland v. Fleeman*, 29 Fed. Rep. 669; *Covert v. Waldron*, 33 Fed. Rep. 311); and it will be presumed that it did so where a petition for removal is not shown, and the ground thereof, and at whose instance removal was had, does not appear. (*Evers v. Watson*, 156 U. S. 527.)

Right of removal restricted to nonresident defendants.—The defendant on the record is the only party entitled to remove a cause for diverse citizenship, although his counterclaim may be the particular matter in dispute. (*La Montagne v. Harvey Lumber Co.* 44 Fed. Rep. 645.) Only defendants may remove a cause. (*Texas & P. Ry. Co. v. Cody*, 106 U. S. 606.) A nonresident plaintiff, suing in a State court, against whom a counterclaim is brought, is “a defendant” within the Act of 1887. (*Carson & Rand Lumber Co. v. Holtzclaw*, 39 Fed. Rep. 578.) A suit is not removable by a resident defendant. (*Weller v. Pace Tobacco Co.*, 32 Fed. Rep. 860; *Anderson v. Appleton*, 32 Fed. Rep. 855; *Mills v. Newell*, 41 Fed. Rep. 529; *Schofield v. Demorest*, 40 Fed. Rep. 273.) Under the Act of 1887 all defendants must be non-residents in order to secure the removal of a suit to the Federal court on the ground of citizenship if only a single controversy is presented. (*Arkansas Valley Smelting Co. v. Cowenhoven*, 41 Fed. Rep. 450.) Residence is prima facie evidence of citizenship, but not conclusive; and a person may be a citizen of one State or county and reside for the time being in another. (*McDonald v. Salem Capital Flour Mills Co.*, 31 Fed. Rep. 577.) Where a complaint filed in a State court by a nonresident against a resident and a non-resident corporation prayed for damages and an ac-

counting from the latter corporation alone for a breach of contract, it is entitled to a removal under the Act of 1887. (*Vinal v. Continental Const. & Imp. Co.*, 34 Fed. Rep. 228.) Corporations are conclusively presumed to be citizens and residents of the State creating them. (*Hirschl v. Threshing Mach. Co.*, 42 Fed. Rep. 803; *Myers v. Nelson*, 43 Fed. Rep. 695; *Baughman v. National W. W. Co.*, 46 Fed. Rep. 4.) The right to a removal by the corporation of another State is not lost by reason of such corporation having an office for the transaction of business in the State in which suit is brought. (*Fales v. Chicago M. & St. P. Ry. Co.*, 32 Fed. Rep. 673; *Scott v. Texas Land & C. Co.*, 41 Fed. Rep. 225; *Myers v. Murray*, 43 Fed. Rep. 695; *Amsden v. Norwich Union F. Ins. Soc.*, 44 Fed. Rep. 515.)

Whole controversy removed.—Where an action is brought by a citizen of one State against several defendants, all citizens of another State, any one of such defendants, without the others, may remove the cause, though it contains but a single controversy. (*Garner v. Second Nat. Bank*, 66 Fed. Rep. 369; *Hunter v. Conrad*, 85 Fed. Rep. 803.) Under this section the whole suit must be removed. (*Sewing Mach. Co.'s Case*, 18 Wall. 553; *Ellis v. Sisson*, 11 Fed. Rep. 353; 11 Bliss, 187; *Barney v. Latham*, 11 The Reporter, N. S. 721; *Carraher v. Brennan*, 7 Biss. 497; Fed. Cas. No. 2441; *Harvey v. Illinois etc. R. Co.*, 7 Biss. 103; Fed. Cas. No. 6434; *Girardey v. Moore*, 3 Woods, 397; Fed. Cas. No. 5462; *Removal Cases*, 100 U. S. 457; *Arapahoe Co. v. Kansas Pac. R. Co.*, 4 Dill. 277; Fed. Cas. No. 502); and not, like the Act of 1866, a part of it. (*Chicago v. Gage*, 6 Biss. 467; Fed. Cas. No. 2664.) It cannot be removed as to one defendant, and left standing as to others. (*Chambers v. Holland*, 11 Fed. Rep. 209; 3 McCrary, 538; *Barney v.*

Latham, 103 U. S. 205; Blake v. McKim, 103 U. S. 336.) Failure of one of the defendants to join in the petition is fatal to the right of removal when there is no separable controversy. (Thompson v. Chicago, St. P. & K. C. Ry. Co., 60 Fed. Rep. 773.) It relates to a single individual controversy in which all on the moving side are necessary parties, when all must unite, while the second clause contemplates cases in which there are persons whose presence is not necessary. (Smith v. McKay, 4 Fed. Rep. 353.) Where the action was by the citizen of a State against several defendants, and the circuit court has jurisdiction from the amount in controversy, any one of the defendants may apply for a removal if the matter can be fully determined between them. (McLean v. St. Paul etc. R. Co., 16 Blatchf. 309; Fed. Cas. No. 8892; Taylor v. Rockefeller, 6 Fed. Rep. 226; Evans v. Faxon, 10 Fed. Rep. 312; 11 Biss. 175; Hervey v. Illinois & Midland R. Co., 7 Biss. 103; Fed. Cas. No. 6434; Girardey v. Moore, 3 Woods, 397; Fed. Cas. No. 5462; First Presb. Soc. of G. B. v. Goodrich T. Co., 7 Fed. Rep. 257; 10 Biss. 312; Maine v. Gillman, 11 Fed. Rep. 214; Wormser v. Dahlman, 16 Blatchf. 319; 57 How. Pr. 286; Fed. Cas. No. 18048); but the controversy must be wholly between them (Evans v. Faxon, 10 Fed. Rep. 312; 11 Biss. 175; Walsh v. Memphis C. & N. W. R. Co., 6 Fed. Rep. 797; 2 McCrary, 156; McLean v. St. Paul & Chicago R. Co., 16 Blatchf. 309; Fed. Cas. No. 8892; Ellerman v. New Orleans, M. T. R. Co., 2 Woods, 120; Fed. Cas. No. 4382; First Presb. Soc. of G. B. v. Goodrich T. Co., 7 Fed. Rep. 257; 10 Biss. 312); and the whole suit must be removed (Carraher v. Brennan, 7 Biss. 497; Fed. Cas. No. 2441; Arapahoe Co. v. Kansas Pac. R., 4 Dill. 277; Fed. Cas. No. 502; Burch v. Davenport & St. P. R. Co., 46 Iowa, 449; 26 Am. Rep. 150; Barney v. Latham 11 Law Reporter, N. S. 93; Chicago v. Gage, 6 Biss. 467; Fed.

Cas. No. 2664); for, if not wholly between them, it cannot be removed, although the controversy of the defendant could be disposed of separately. (*Girardey v. Moore*, 3 Woods, 397; Fed. Cas. No. 5462.) The suit may be removed, although it does not arise under the Constitution, treaties or laws of the United States (*Low v. Wayne Co. Sav. Bank*, 14 Blatchf. 449; Fed. Cas. No. 8562); and irrespective of its quality as equitable or legal (*Ketchum v. Black Riv. Lum. Co.*, 4 Fed. Rep. 139); and although there may be other controversies in suit between other parties (*Hervey v. Illinois M. R. Co.*, 7 Biss. 103; Fed. Cas. No. 6434; *Bybee v. Hawckett*, 5 Fed. Rep. 1; 6 Sawy. 593; *Stevens v. Richardson*, 9 Fed. Rep. 191; 20 Blatchf. 53; *Evans v. Faxon*, 10 Fed. Rep. 312; 11 Biss. 175); or although the controversy removed is only incidental, as the removal takes the principal controversy, and all other controversies, to the circuit court (*Farmers' L. & T. Co. v. C. P. & S. R. Co.*, 9 Biss. 133; Fed. Cas. No. 4665); or although one of the controversies taken alone is between citizens of the same State. (*Sheldon v. Keokuk N. W. Line P. Co.*, 1 Fed. Rep. 789.) The removal of the suit as to one defendant removes it as to all (*Stapleton v. Reynolds*, 9 Chic. L. N. 33; Fed. Cas. No. 13303); and all the defendants need not join. (*Stapleton v. Reynolds*, 9 Chic. L. N. 33; Fed. Cas. No. 13303; *Davis v. Cook*, 9 Nev. 134.) Where all the parties have the requisite citizenship, one alone may petition. (*Arapahoe v. Kansas P. R. Co.*, 4 Dill. 277; Fed. Cas. No. 502; *Girardey v. Moore*, 3 Woods, 397; Fed. Cas. No. 5462; *Carswell v. Schley*, 59 Ga. 17.) This clause applies to suits where there may be distinct controversies between different sets of plaintiffs and defendants (*Maine v. Gillman*, 10 Fed. Rep. 214; *Barney v. Latham*, 103 U. S. 205), when the parties may be so transposed on opposite sides, according to their in-

terests, as to effect a determination of their rights. (*Burke v. Flood*, 1 Fed. Rep. 541; 6 Sawy. 220.) Under this clause each individual plaintiff must be a citizen of a State different from that of each individual defendant. (*Burke v. Flood*, 1 Fed. Rep. 541; S. C. 6 Sawy. 220; *Van Brunt v. Corbin*, 14 Blatchf. 496; Fed. Cas. No. 16832; *In re Frazer*, 10 Chic. L. N. 390; Fed. Cas. No. 5068; *Ruble v. Hyde*, 3 Fed. Rep. 330; 1 McCrary, 513.) If some of the plaintiffs or some of the defendants are citizens of the same State, one alone cannot remove the cause. (*Hervey v. Illinois M. R. Co.*, 7 Biss. 103; Fed. Cas. No. 6434; *Ruckman v. Palisades Land Co.*, 1 Fed. Rep. 367.) The case may be removed where the parties applying have interpleaded, as where intervenors charge fraud and want of jurisdiction. (*Burdick v. Peterson*, 6 Fed. Rep. 840; 2 McCrary, 135; *Tarver v. Ficklin*, 60 Ga. 373; *Healy v. Provost*, 8 Reporter, 103; 25 Int. Rev. Rec. 240; Fed. Cas. No. 6297; see *Postmaster-General v. Cross*, 4 Wash. C. C. 326; Fed. Cas. No. 11306; *Martin v. Taylor*, 4 Wash. C. C. 1; Fed. Cas. No. 9166.) Either one or more may apply for a removal, although other parties are citizens of the same State with those on the opposite side. (*In re Iowa & M. Const. Co.*, 10 Fed. Rep. 401; 3 McCrary, 310.) Where the controversy is severable, a joint tortfeasor may remove (*Lockhart v. Horn*, 1 Woods, 628; Fed. Cas. No. 8445; and see *Sheldon v. Keokuk*, N. L. P. Co., 1 Fed. Rep. 789; 9 Biss. 307; *Taylor v. Rockefeller*, 7 Cent. L. J. 349; Fed. Cas. No. 13802; *Clark v. Chicago M. & St. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591); and where plaintiff has united controversies which can be fully determined as between parties, citizens of another State may remove the cause (*Clark v. Chicago M. & S. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591); but if the cause of action is joint, it cannot be removed on petition of one only.

(*Stevens v. Richardson*, 9 Fed. Rep. 191.) The right of removal in such cases is on the condition that the case can be wholly determined as to the parties (*Nat. Union Bank v. Dodge*, 25 Int. Rev. Rec. 304; Fed. Cas. No. 10053); so if three separate actions are brought, and the same defense is made in each, and a judgment in one will determine the whole controversy, they may be removed if the joint amount incontrovertibly exceeds the jurisdictional amount. (*Carraher v. Brennan*, 7 Biss. 497; Fed. Cas. No. 2441; *Ellerman v. New Orleans etc. Co.*, 2 Woods, 120; Fed. Cas. No. 4382; *Smith v. St. Louis M. L. Ins. Co.*, 2 Tenn. Ch. 656; *Smith v. McKay*, 4 Fed. Rep. 353; *Hervey v. Illinois M. R. Co.*, 7 Biss. 103; Fed. Cas. No. 6434; *Chicago v. Gage*, 6 Biss. 467; Fed. Cas. No. 2664; *Osgood v. Chicago etc. R. Co.*, 6 Biss. 330; Fed. Cas. No. 10604; *Arapahoe Co. v. Kansas Pac. R. Co.*, 4 Dill. 277; Fed. Cas. No. 502; *Burnham v. D. & M. R. Co.*, 4 Dill. 503; Fed. Cas. No. 2174.) Where five attachments were separately sued out against one stock of goods, the question of ownership is a single controversy. (*Anderson v. Girding*, 3 Woods, 487; Fed. Cas. No. 356.) There may be a removal of that part of a cause which concerns the original parties (*Temple v. Smith*, 4 Fed. Rep. 392; 2 McCrary, 226), notwithstanding that a State statute may declare that the trial as to certain other parties cannot be separated from the trial of the main cause. (*Ellerman v. New Orleans M. & T. R. Co.*, 2 Woods, 120; Fed. Cas. No. 4382.) But the circuit court has no authority to decide an action not yet before it, to obtain jurisdiction over one of several tenants in common. (*Ex parte Turner*, 3 Wall. Jr. 258; Fed. Cas. No. 14245.)

§ 98. Removal of separable controversies.— And when in any suit mentioned in this section there shall be a controversy which is wholly be-

tween citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the circuit court of the United States for the proper district. ("Plaintiffs or" in Act of March 3, 1875, omitted herein. 25 U. S. Stats. 433.)

Construction of above clause—Separable suits.—The above clause of the second section of the act of 1888 governs that class of cases only where there are two or more controversies involved in the same suit, one of which is wholly between citizens of different States; and the right of removal is limited to one or more of the defendants actually interested in such separable controversy, and does not extend to the plaintiffs therein (*Western Union Tel. Co. v. Brown*, 32 Fed. Rep. 337).

Separable controversies removable.—In order to justify a removal of a cause on the grounds of a separate controversy between citizens of different States, the whole subject matter of the suit must be capable of being finally determined as between them and complete relief afforded as to the separate cause of action without the presence of others originally made parties to the suit (*Torrence v. Shedd*, 144 U. S. 527; *Merchant's Cotton Press & S. Co. v. Insurance Co. of N. A.*, 151 U. S. 368; *Stambrough v. Cook*, 38 Fed. Rep. 369). The question whether there is a separable controversy must be determined by the state of the pleadings at the time of the application for removal (*Wilson v. Oswego Township*, 151 U. S. 56; *In re The Jarnecke Ditch*, 69 Fed. Rep. 161; *Louisville & N. R. Co. v. Wangelin*, 132 U. S. 599). Where a right of action is in its nature joint and several, the bringing of the action

against part of the tort feasons only does not amount to an election to treat it as several only (*Fox v. Mackay*, 60 Fed. Rep. 4). A defendant cannot make an action several which plaintiff has elected to make joint (*Torrence v. Shedd*, 144 U. S. 527; *Brown v. Coxe Bros. & Co.*, 75 Fed. Rep. 689; *Kane v. City of Indianapolis*, 82 Fed. Rep. 770; *Ames v. Chicago S. F. & C. R. Co.*, 39 Fed. Rep. 881). Where a cause could only have been removed because of a separate cause of action against one defendant the cause should be remanded upon a settlement between plaintiff and him (*Torrence v. Shedd*, 144 U. S. 527; *Texas Transp. Co. v. Seeligson*, 122 U. S. 519). A controversy is not divisible where the object of the suit is to condemn and appropriate to the public use a single lot of land, because the two defendants own distinct interests and may be entitled to separate damages (*City of Bellaire v. Baltimore & O. R. R. Co.*, 146 U. S. 117). A separable controversy does not exist in an assessment proceeding where the court in a single judgment assesses each piece of property for an amount proportionate to the amount of benefit to be received (*In re City of Chicago*, 64 Fed. Rep. 897). In an action on an insurance bond brought against an insurance company and a surety, the controversy is not separable (*Mutual Reserve Fund L. A. v. Farmer*, 36 U. S. App. 771; 77 Fed. Rep. 929). A cause is separable where one defendant is alleged to have obtained a note by fraud and there is no allegation that his indorsee, the other defendant, was cognizant of or a party to the fraud (*New York Const. Co. v. Simon*, 53 Fed. Rep. 1). A cause against a railroad company and its section foreman for negligently setting fire and permitting it to spread is not separable (*Deere, Wells & Co. v. Chicago M. & St. P. Co.*, 85 Fed. Rep. 876). For examples of cases containing

separable controversies, see *Sugar Creek etc. Co. v. McKell*, 75 Fed. Rep. 34; *Southern Pac. Ry. Co. v. Townsend*, 62 Fed. Rep. 161; *Lake Street El. R. Co. v. Farmer's Loan & T. Co.*, 72 Fed. Rep. 804; *Bacon v. Felt*, 38 Fed. Rep. 870; *Spangler v. Atchison T. & S. F. R. Co.*, 42 Fed. Rep. 305; *Pitkin County Min. Co. v. Markell*, 33 Fed. Rep. 386; *Gould v. Mullanphy etc. Co.*, 32 Fed. Rep. 181). Examples of what are not separable controversies (*Trumbull Wagon Co. v. Linthicum Carriage Co.*, 80 Fed. Rep. 4; *Guarantee Co. v. Mechanic's Bank*, 47 U. S. App. 91; 80 Fed. Rep. 766; *In re Foley*, 80 Fed. Rep. 949; *In re Jarnecke Ditch*, 69 Fed. Rep. 161; *Lewis v. Weidenfeld*, 76 Fed. Rep. 145; *Chapman v. Chapman*, 28 Fed. Rep. 1; *Reineman v. Ball*, 33 Fed. Rep. 692; *May v. St. John*, 38 Fed. Rep. 770; *In re McLean*, 26 Fed. Rep. 49). Where the petition for removal was sufficient, but the record does not disclose all the evidence nor disclose such separable controversy as was capable of removal, the judgment should not be reversed for improper removal (*Connell v. Smiley*, 156 U. S. 335). A defendant cannot remove a separable controversy to the Federal court unless he is a nonresident of the State where the suit is brought (*Thurber v. Miller*, 32 U. S. App. 209; 67 Fed. Rep. 371); but see, *Stanbrough v. Cook*, 38 Fed. Rep. 369). Separate answers or separate defenses interposed by the defendants may present different questions for determination but they do not necessarily divide into separate controversies (*Torrence v. Shedd*, 144 U. S. 527; *Rosenthal v. Coates*, 148 U. S. 142; *Arrowsmith v. Nashville & S. R. Co.*, 51 Fed. Rep. 165; *O'Harrow v. Henderson*, 52 Fed. Rep. 769; *Thurber v. Miller*, 32 U. S. App. 209; 67 Fed. Rep. 371; *Robbins v. Ellenbogen*, 71 Fed. Rep. 4.) The right to remove on the ground of a separable controversy is confined to the parties actually

interested in such controversy (Merchant's Cotton Press & S. Co. v. Insurance Co. of N. A., 151 U. S. 368; Rand v. Walker, 117 U. S. 340). Where there is a joint cause of action against several defendants there is no separable controversy. (Western Union Tel. Co. v. Brown, 32 Fed. Rep. 337.) As to whether cases of joint torts are removable the authorities are in conflict (Kreling v. Cotzhausen, 16 Fed. Rep. 705; Pirie v. Tvedt, 115 U. S. 41; Sloane v. Anderson, 117 U. S. 275; Louisville & N. R. Co. v. Wangelin, 132 U. S. 599; Thorn Wire Hedge Co. v. Fuller, 122 U. S. 535). A separate controversy is not introduced into the case by separate defenses to the same cause of action (Louisville & N. R. Co. v. Ide, 114 U. S. 52; Hyde v. Ruble, 104 U. S. 407; Sloane v. Anderson, 117 U. S. 275; Hax v. Caspar, 31 Fed. Rep. 500; In re San Antonio v. A. P. R. Co., 44 Fed. Rep. 145; Ames v. Chicago S. F. & C. R. Co., 39 Fed. Rep. 881).

§ 99. Removal on ground of prejudice or local influence.—And where a suit is now pending, or may be hereafter brought in any State court in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant, being such citizen of another State, may remove such suit into the circuit court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said circuit court that from prejudice or local influence he will not be able to obtain justice in such State court, or in any other State court to which the said defendant may, under the laws of the State, have the right, on account of such prejudice or local influence, to re-

move said cause, provided, that if it further appear that said suit can be fully and justly determined as to the other defendants in the State court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said circuit court may direct the suit to be remanded, so far as relates to such other defendants, to the State court, to be proceeded with therein. (25 U. S. Stats. 433.) Secs. 100, 101, have been repealed by implication. See sec. 99, and notes.

Prejudice act of 1867 repealed.—It is now well settled that the act of 1887-1888 by new regulations concerning removals for prejudice or local influence superseded and repealed entirely the former statutes upon the subject, and planted the matter upon a new basis (*Fisk v. Henarie*, 142 U. S. 459; *Hanrick v. Hanrick*, 153 U. S. 192; *Short v. Chicago R. R. Co.*, 33 Fed. Rep. 114; *Whelan v. New York Ry. Co.*, 35 Fed. Rep. 849; *Minnick v. Union Ins. Co.*, 40 Fed. Rep. 369; *Cooper v. Richmond & D. R. Co.*, 42 Fed. Rep. 697; *Thouron v. East Tennessee Ry. Co.*, 38 Fed. Rep. 673; *Short v. Chicago etc. R. R. Co.*, 33 Fed. Rep. 114).

Prejudice and local influence—When right to remove exists.—The prejudice mentioned in the statute includes prejudice in favor of plaintiff which may arise from the fact that he is a long resident and favorably known in the community (*Neale v. Foster*, 31 Fed. Rep. 55). A party is not entitled to remove on account of prejudice and local influence, unless the adverse party is a citizen of the State in which suit is brought. (*Amer. Bible Soc. v. Grove*, 101 U. S. 610.) The act of 1888 does not

authorize removal by a defendant upon the ground of prejudice or local influence between himself and other defendants (*Hanrick v. Hanrick*, 153 U. S. 192). This statute does not permit a citizen of the State in which suit is brought to make the application for removal. (*Aldrich v. Crouch*, 10 Fed. Rep. 305; 11 Biss. 180; *Babbitt v. Clark*, 103 U. S. 606; *Gurnee v. Brunswick Co.*, 1 Hughes, 270; Fed. Cas. No. 5872; *Murray v. Holden*, 2 Fed. Rep. 740; 1 McCrary, 341; *Forest v. Keeler*, 17 Blatchf. 522; *Kerting v. Amer. Oleograph Co.*, 10 Fed. Rep. 17; 11 Biss. 81.) The plaintiffs, if jointly interested, must all be citizens of the State in which suit is brought (*Gann v. North-eastern Ry. Co.*, 57 Fed. Rep. 417; *Niblock v. Alexander*, 44 Fed. Rep. 306; *Rike v. Floyd*, 42 Fed. Rep. 247). A removal of a cause from a State court to a circuit court, under the Local Prejudice Act, can only be had where all the parties to the suit on one side are citizens of different States from those on the other. (*Amer. Bible Soc. v. Price*, 110 U. S. 61; *Jefferson v. Driver*, 117 U. S. 272; *Cambria Iron Co. v. Ashburn*, 118 U. S. 54; *Hancock v. Holbrook*, 119 U. S. 586; *Anderson v. Bowers*, 43 Fed. Rep. 321; *Gaines v. Fuentes*, 92 U. S. 10; *Rosenthal v. Coates*, 148 U. S. 142; *Thouron v. East Tennessee V. & G. R. Co.*, 38 Fed. Rep. 673; but see, *contra*, *City of Detroit v. Detroit City Ry. Co.*, 54 Fed. Rep. 1; *Jackson & Sharp Co. v. Pearson*, 60 Fed. Rep. 113; *Bonner v. Meikle*, 77 Fed. Rep. 485; *Whelan v. New York R. Co.*, 35 Fed. Rep. 849; *Fisk v. Henarie*, 32 Fed. Rep. 417.) It does not apply when one party is an alien (*Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App. 45; 59 Fed. Rep. 727; *Cohn v. Louisville N. O. & T. R. Co.*, 39 Fed. Rep. 227; *Calker v. O'Neil*, 33 Fed. Rep. 374). Local prejudice is not shown by an affidavit alleging that the newspapers of the county have denounced the defendant com-

pany. that the State judge announced that he would see that defendants did not take the property out of the county, and that the opposing lawyers referred to the defendant in abusive language (*Turnbull Wagon Co. v. Linthicum Carriage Co.*, 80 Fed. Rep. 4). It is only necessary to show legally that prejudice and local influence do exist which will naturally operate to the disadvantage of defendant in the trial of his case (*City of Tacoma v. Wright*, 84 Fed. Rep. 836). Where the facts indicated strong prejudice against defendant railroad company in the county where the suit was brought the action was held removable (*Herndon v. Southern R. Co.*, 76 Fed. Rep. 398). The right to remove exists where the prejudice might affect the judge in his rulings as well as the jury (*City of Detroit v. Detroit City Ry. Co.*, 54 Fed. Rep. 1); as for example when the rulings of the State judges against a party would endanger their chances of re-election (*City of Detroit v. Detroit City Ry. Co.*, 54 Fed. Rep. 1). A State law authorizing a change of venue on ground of local prejudice without giving defendant the right to remove the cause, does not affect in any way his right to remove it into a Federal court (*City of Tacoma v. Wright*, 84 Fed. Rep. 836). An objection that the showing of local prejudice was insufficient is waived by failure to prosecute a motion to remand (*Tod v. Cleveland & M. V. Ry. Co.*, 22 U. S. App. 707; 65 Fed. Rep. 145). The diversity of citizenship must have existed at the time of the application for removal, but need not have existed when the suit was commenced (*Hone v. Dillon*, 29 Fed. Rep. 465). Under act of 1887 one of several defendants may remove a cause on the ground of local prejudice whether there is a separable controversy or not, and where there is no separable controversy, the cause will not be remanded as to the

other defendants (*Haire v. Rome R. Co.*, 57 Fed. Rep. 321; *Bonner v. Meikle*, 77 Fed. Rep. 487). The record presented upon an application to remove on the ground of local prejudice must show that the amount in controversy exceeds \$2,000 (*Tod v. Cleveland & M. V. Ry. Co.*, 22 U. S. App. 707; 65 Fed. Rep. 145; *Malone v. Richmond etc. Ry. Co.*, 35 Fed. Rep. 625; *Roraback v. Pennsylvania Co.*, 42 Fed. Rep. 420; but see, contra, *McDermott v. Chicago R. Co.*, 38 Fed. Rep. 529; *Fales v. Chicago R. Co.*, 32 Fed. Rep. 673). The restrictions as to suits by assignees do not apply to this clause (*Clafin v. Insurance Companies*, 110 U. S. 81; *Bell v. Noonan*, 19 Fed. Rep. 225). The fact that Congress has not given original jurisdiction to the circuit court on the ground of local prejudice does not affect its jurisdiction on removal by nonresident defendants (*Whelan v. New York etc. R. Co.*, 35 Fed. Rep. 849; but see *Thouron v. East Tennessee R. Co.*, 38 Fed. Rep. 673).

Who may remove on ground of prejudice.—The right of removal is restricted to the defendant (*Canal H. S. R. Co. v. Hart*, 114 U. S. 654; *Tullock v. Webster County*, 40 Fed. Rep. 706). But a non-resident plaintiff, suing in the State court, against whom a counterclaim is interposed, is a defendant within the meaning of the local prejudice clause of the act of 1887 (*Carson & R. Lumber Co. v. Holtzclaw*, 39 Fed. Rep. 578; *Walcott v. Watson*, 46 Fed. Rep. 529). A defendant sued in his own State cannot remove the cause on the ground of local prejudice (*Schofield v. Demorest*, 40 Fed. Rep. 273; *Mills v. Newell*, 41 Fed. Rep. 529; *Gavin v. Vance*, 33 Fed. Rep. 85). When one party is an alien a cause cannot be removed on the ground of local prejudice (*Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App.

45; 59 Fed. Rep. 727; *Cohn v. Louisville N. O. & T. R. Co.*, 39 Fed. Rep. 227). Any defendant may remove the cause on the ground of prejudice and the other defendants need not join (*Fisk v. Henarie*, 32 Fed. Rep. 417).

Proceedings for removal on ground of prejudice—**Time.**—After a cause has been tried in a State court, and a mistrial entered, it cannot be removed on the ground of local prejudice (*Farmer's & Merchant's Nat. Bank v. Schuster*, U. S. App.; 86 Fed. Rep. 161; *Davis v. Chicago & N. W. R. Co.*, 46 Fed. Rep. 307; but see *Broadhead v. Shoemaker*, 44 Fed. Rep. 518). Under the act of 1887-1888 a cause can only be removed to the Federal court on the ground of local prejudice before the trial of the case (*Hobart v. Illinois Cent. Ry. Co.*, 81 Fed. Rep. 5; *Fisk v. Henarie*, 35 Fed. Rep. 230). The cause may be removed at any time before the first trial is actually held, although such trial might have been held before the date of the application for removal (*City of Detroit v. Detroit City Ry. Co.*, 54 Fed. Rep. 1). The submission of a demurrer and the rulings of the court thereon constitute a "trial" so as to prevent removal (*Hobart v. Illinois Cent. Ry. Co.*, 81 Fed. Rep. 5; *Lookout Mountain R. R. Co. v. Houston*, 32 Fed. Rep. 711; contra, *Whelan v. New York Cent. Ry. Co.*, 35 Fed. Rep. 849).

Notice of removal.—Under the prejudice and local influence clause of the act of 1887-1888 notice to the adverse party of the removal is not jurisdictional, and such motion may be made upon ex parte hearing (*Reaves v. Corning*, 51 Fed. Rep. 774; *Hernndon v. Southern R. R. Co.*, 73 Fed. Rep. 307; *Bonner v. Meikle*, 77 Fed. Rep. 485); but the better practice is to give notice to the opposite party, specifying the proofs to be used, and afford him an op-

portunity to present counter affidavits if desired (*Bonner v. Meikle*, 77 Fed. Rep. 485; *Herndon v. Southern R. R. Co.*, 73 Fed. Rep. 307; *Schwenk & Co. v. Strang*, 19 U. S. App. 300; 59 Fed. Rep. 209; *Carson & R. Lumber Co. v. Holtzclaw*, 39 Fed. Rep. 578).

The petition.—In order to remove a cause on the ground of prejudice defendant should obtain an order for removal from the Federal Court, file that in the State court and take from it a transcript and file in the Federal court (*Pennsylvania Co. v. Bender*, 148 U. S. 255; *Bonner v. Meikle*, 77 Fed. Rep. 487; *Kaitel v. Wylie*, 38 Fed. Rep. 865; *Southworth v. Reid*, 36 Fed. Rep. 451). The petition need not be verified by the petitioner in person (*Bonner v. Meikle*, 77 Fed. Rep. 487). And if the citizenship of the defendant is different from that of plaintiff it is not necessary that any of the codefendants join in the petition (*Bonner v. Meikle*, 77 Fed. Rep. 485; *Haire v. Rome R. R. Co.*, 57 Fed. Rep. 321).

Proof of prejudice.—The application must be supported by such proof as will satisfy the court of the truth of its allegations (*Southworth v. Reid*, 36 Fed. Rep. 451). Under the act of 1887-1888 an affidavit of a person authorized to make it is proper proof (*Cooper v. Richmond etc. R. Co.*, 42 Fed. Rep. 697; *Brodhead v. Shoemaker*, 44 Fed. Rep. 518). The affidavit is sufficient if it states that the facts are of affiant's opinion and belief, if the facts on which such belief is based are given (*City of Detroit v. Detroit City Ry. Co.*, 54 Fed. Rep. 1). It is not necessary to state the facts on which affiant's opinion and belief are based (*Sutherland v. Jersey City etc. R. R. Co.*, 22 Fed. Rep. 356; *Fisk v. Henarie*, 32 Fed. Rep. 230; *Collins v. Campbell*, 62 Fed. Rep. 850; contra, *Hakes v. Burns*, 40 Fed. Rep. 33; *Goldworthy v.*

Chicago M. & St. P. Ry. Co., 38 Fed. Rep. 769; Minnick v. Union Ins. Co., 40 Fed. Rep. 369). It is sufficient, although there is no statement as to what plaintiff had "reason to believe and does believe." (Whelan v. New York etc. R. R. Co., 35 Fed. Rep. 849.) The affidavit as well as the petition must allege as a matter of fact that prejudice or local influence exists. (Collins v. Campbell, 62 Fed. Rep. 850; Short v. Chicago M. & St. P. Ry. Co., 33 Fed. Rep. 114.) The affidavit must show compliance with all the statutory requisites. (Sutherland v. Jersey City Ry. Co., 22 Fed. Rep. 356.) It must show that prejudice exists in the adjacent counties to which the court might send the cause for trial. (Robinson v. Hardy, 38 Fed. Rep. 49; Rike v. Floyd, 42 Fed. Rep. 247.) If petitioner is a corporation the petition may be signed and the affidavit be made by some person properly authorized to act for the corporation. (Duff v. Duff, 31 Fed. Rep. 772.)

Order removing cause.—The mere filing of the petition for the removal and bond in the State court is not of itself a removal. (Huskins v. Cincinnati etc. R. R. Co., 37 Fed. Rep. 504.) Defendant should obtain an order for removal from the federal court, file that in the State court, and take from it a transcript and file in the federal court. (Pennsylvania Co. v. Bender, 148 U. S. 255; Bonner v. Meikle, 77 Fed. Rep. 487; Kaitel v. Wylie, 38 Fed. Rep. 865; Southworth v. Reid, 36 Fed. Rep. 451.) The mere entry in the record of the federal court of a finding that the right to remove on the ground of prejudice exists is not an order. (Tod v. Cleaveland & M. V. R. R. Co., 22 U. S. App. 707; 65 Fed. Rep. 145.)

§ 102. Remand of cause removed on ground of prejudice and local influence.—At any time before

the trial of any suit which is now pending in any circuit court, or may hereafter be entered therein, and which has been removed to said court from a State court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence he was unable to obtain justice in said State court, the circuit court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in such State court, it shall cause the same to be remanded thereto. (Act of 1887, 25 U. S. Stats. 433.)

Trial of question of prejudice.—The proper mode of controverting the application for removal is by a dilatory plea in the nature of a plea to the jurisdiction on which the question may be submitted to a jury for determination. (*McDonald v. Salem Capital Flours M. Co.*, 31 Fed. Rep. 578; *Fisk v. Henarie*, 32 Fed. Rep. 417.) Under the act of 1887 a plea by plaintiffs simply denying defendant's belief in the existence of such prejudice or local influence is insufficient and raises no issue on that question, as the plea should affirm that it does not exist. (*County Court of Taylor County v. Baltimore & O. R. Co.*, 35 Fed. Rep. 161.) Under the act of 1887 the question whether there is no prejudice is open to inquiry and may be determined from the evidence produced by both parties on motion to remand. (*Dennison v. Brown*, 38 Fed. Rep. 535.) The act substitutes the judgment of the circuit court on such application for the judgment of the removing party, and makes the existence of such prejudice a traversible issue, while before it was left wholly to the conscience of the

affiant. (*Amy v. Manning*, 38 Fed. Rep. 868.) Its decision thereon may be reconsidered upon a motion to remand, and vacated and the cause remanded, if the court is satisfied that the removal has been improperly granted. (*Amy v. Manning*, 38 Fed. Rep. 868.) The court must in some way find as a fact that prejudice or undue influence exists, to determine the right to a removal. (*Robinson v. Hardy*, 38 Fed. Rep. 49; *Walker v. O'Neil*, 38 Fed. Rep. 374.) The existence of "local prejudice or influence" is not a jurisdictional fact so as to entitle the adverse party to put it in issue for formal trial. (*Huskins v. Cincinnati R. Co.*, 37 Fed. Rep. 504.) It must be made to appear to the federal court by proof (by affidavit or otherwise) of facts showing such prejudice. (*Southworth v. Reid*, 36 Fed. Rep. 451.) Counter-affidavits denying prejudice cannot be received on motion to remove unless it be first shown that the court was misled in granting the order. (*Reeves v. Cornung*, 51 Fed. Rep. 774.) The prejudice must be shown to the legal satisfaction of the court, the amount and manner of proof required being left to the discretion of the court itself, which may or may not require other proof in addition to a verified petition. (*Walcott v. Watson*, 46 Fed. Rep. 529; see further, *Whelan v. New York L. E. & W. R. Co.*, 35 Fed. Rep. 849; *Cooper v. Richmond & D. R. Co.*, 42 Fed. Rep. 697; *Dennison v. Brown*, 38 Fed. Rep. 535; *Hills v. Richmond & D. R. Co.*, 33 Fed. Rep. 81; *Short v. Chicago M. & St. P. R. Co.*, 34 Fed. Rep. 225; *Malone v. Richmond & D. R. Co.*, 35 Fed. Rep. 625; *Niblock v. Alexander*, 44 Fed. Rep. 306; *Hakes v. Burns*, 40 Fed. Rep. 34; *Minnick v. Union Ins. Co.*, 40 Fed. Rep. 369.)

Order remanding cause removed on ground of prejudice.—An order remanding a cause removed on

the ground of prejudice does not deprive the removing party of his property without due process of law, because after the order retaining the cause he had spent money in preparing for trial. (*Birdseye v. Shaeffer*, 37 Fed. Rep. 821.)

§ 103. **Removal of suits on land titles under State grants.**—And if in any action commenced in a State court the title of land be concerned, and the parties are citizens of the same State, and the matter in dispute exceed the sum or value of two thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit, if the court require it, that he or they claim and shall rely upon a right or title to the land under a grant from the State, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other State; the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial; and if he or they inform that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this act, remove the cause for trial to the circuit court of the United States next to be holden in such district, and any one of either party

removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim. (Act of March 3, 1875, sec. 3; as amended by Act of August 13, 1888, 25 U. S. Stats. 433.)

Note.—The original section, Rev. Stats. sec. 647, was repealed and consolidated with section 3 of the Removal Act. (*Osgood v. C. D. etc. R. Co.*, 6 Biss. 330; Fed. Cas. No. 10604.)

Conflicting land grants.—A party who claims land under an act of Congress imposing a direct tax may remove an ejectment suit concerning it. (*Peyton v. Bliss*, 1 Woolw. 170; Fed. Cas. No. 11055.) Controversies between citizens claiming lands under grants from different States are within the jurisdiction, notwithstanding one of the States at the time of the first grant was a part of the other. (*Town of Pawlet v. Clark*, 9 Cranch 292.) It is the first grant which passes legal title and authorizes jurisdiction. (*Colson v. Lewis*, 2 Wheat. 377.) If a State issues a grant under the authority of a compact with another State, the case cannot be removed. (*Thompson v. Kendricks*, 5 Hayw. 115.) The right under this section to remove depends on the value of the land and not on the title (*Thompson v. Kendricks*, 5 Hayw. 115); and witnesses may be produced to prove its value. (*Thompson v. Kendricks*, 5 Hayw. 115.) The party applying on the ground of grants from different States must produce his grant in evidence (*Thompson v. Kendricks*, 5 Hayw. 115); but a grant based on a warrant and location made before the separation of a part of a State is sufficient showing. (*Colson v. Lewis*, 2 Wheat. 377; *Town of Pawlet v. Clark*, 9 Cranch, 292.) A party who claims under a grant

from the State in which suit is pending cannot remove the case. (*Shepherd v. Young*, 1 T. B. Mon. 203.)

§ 104. Removal of causes against persons denied any civil rights, etc.—When any civil suit or criminal prosecution is commenced in any State court for any cause whatsoever against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs, made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial in the next circuit court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and exe-

cution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant petitioning for a removal copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the circuit court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the circuit court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and in case of his default may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the circuit court as herein provided, a certificate, under the seal of the circuit court, stating such failure, shall be given, and upon the production thereof in the said State court the cause shall proceed therein as if no petition for a removal had been filed. [See sec. 1977.] (Rev. Stats. sec. 641.)

Note.—This section is not in conflict with the Constitution of the United States. (*Strauder v. West Va.*, 100 U. S. 303; *Fitzgerald v. Allman*, 22 Alb. L. J. 218; *State v. Dunlap*, 65 N. C. 491; 6 Am. Rep. 746;

Capehart v. Stewart, 80 N. C. 101.) Under the acts of 1863 and 1866, it is indispensable that the petition filed be properly verified. (Florence v. Butler, 9 Abb. Pr. N. S. '63.) That the Act of March 3, 1863, embodied in this section is constitutional. (See McCormick v. Humphrey, 27 Ind. 144; McCormick v. Mayfield, 27 Ind. 143; State v. Common Pleas, 15 Ohio St. 377; Hodgson v. Milward, 3 Grant 412; Kulp v. Ricketts, 3 Grant, 420.)

Denial of civil rights.—The Constitution and laws of the United States make the rights and responsibilities, civil and criminal, of the white and colored races exactly the same (Virginia v. Rives, 100 U. S. 313); and Congress has power under the Fourteenth Amendment to secure the rights of the colored race, and enforce their recognition, by providing for the removal of causes into the Federal courts where these rights will be acknowledged, if denied to them in the State court (Virginia v. Rives, 100 U. S. 313); and this section was intended as a protection to them against State action, and against that alone. (Virginia v. Rives, 100 U. S. 313.) It is only when some State law, ordinance, regulation, or custom hostile to these rights is alleged to exist that a removal can be had under the first clause of this section. (In re Wells, 3 Woods, 128; Fed. Cas. No. 17386.) A colored person cannot remove his cause unless he can show that denial of his civil rights arises from an act of the civil government of the State. (Fowlkes v. Fowlkes, 8 Chic. L. N. 41; Fed. Cas. No. 5005.) This section does not apply where the denial of equal rights, or an inability to enforce them, results from the action of the judiciary (Ex parte Virginia, 100 U. S. 339); it must be a denial or inability resulting from the Constitution or laws of the State (Ex parte Virginia, 100 U. S. 339); and it refers to legal disabilities and

legal impediments, and not to private infringements by prejudice or otherwise, when the laws themselves are impartial and sufficient. (*Strauder v. West Virginia*, 100 U. S. 303); but the mere fact that a grand Fed. Cas. No. 18171; *In re Wells*, 3 Woods, 128; Fed. Cas. No. 17386; *Thomas v. State*, 58 Ala. 365; *State v. Gleason*, 12 Fla. 190; *Fitzgerald v. Allman*, 82 N. C. 492; *State v. Smalls*, 11 S. C. 262; *State v. Dubuclet*, 10 Chic. L. N. 132; Fed. Cas. No. 8538; *Le Grand v. United States*, 12 Fed. Rep. 577, note, 583; contra, *State v. Dunlap*, 65 N. C. 491; 6 Am. Rep. 746.)

In criminal cases.—A criminal case cannot be removed prior to finding an indictment. (*Commonwealth v. Paul*, 148 U. S. 107; *Com. v. Artman*, 3 Gratt. 436; see *People v. Murray*, 5 Parker Cr. C. 577.) If indicted for an offense, a colored person may remove the cause if the State law allows none but white men to serve as jurors (*Strauder v. West Virginia*, 100 U. S. 303); but the mere fact that a grand or petit jury is not a mixed jury does not give the right to a removal (*Ex parte Virginia*, 100 U. S. 339; contra, *Ex parte Burwell*, 3 Hughes, 559; Fed. Cas. No. 11720); or the fact that colored persons are excluded from a jury by petty officers where the laws of the State do not authorize such exclusion (*Murray v. State of Louisiana*, 163 U. S. 101; *Gibson v. State of Mississippi*, 162 U. S. 565); but a statute singling out colored persons, and denying them the right to act as jurors, denies them the equal protection of the laws. (*Strauder v. West Virginia*, 100 U. S. 303; see *Cases of County Judges*, 3 Hughes, 577; Fed. Cas. No. 3281.) Color of office is an apparent or *prima facie* right, an appearance of right or authority (*Hodgson v. Milward*, 3 Grant, 412; *Kulp v. Ricketts*, 3 Grant, 420); and authority means a proper legal or constitutional authority. (*State v. Bliss*, 3 Grant, 427.) An officer who is acting in good faith under a warrant is

acting under color of authority. (State v. Common Pleas, 15 Ohio St. 377; Hodgson v. Milward, 3 Grant, 418.) An action for an arrest by the officer of a municipal corporation cannot be removed. (Woodson v. Fleck, Chase, 305; Fed. Cas. No. 17996.) Although the petition states that he was an officer, yet it must also state the wrong charged, and that it was done by virtue of authority derived from the law. (Short v. Wilson, 1 Bush, 350; Skeen v. Huntington, 25 Ind. 510.) A person who denies participation in an arrest, and charges it upon a federal soldier, cannot remove. (Eifort v. Bevins, 1 Bush, 460.) Where a negro indicted for a felony petitions on the ground that persons of African descent were excluded from the jury, the petition may be denied. (Neal v. Delaware, 103 U. S. 370; Bush v. Kentucky, 107 U. S. 110.) The trial of a cause for rape is removable. (Neal v. State, 103 U. S. 370; Strauder v. West Virginia, 100 U. S. 303; Virginia v. Rives, 100 U. S. 313; Ex parte Virginia, 100 U. S. 339.) A criminal prosecution cannot be removed where neither the constitution nor laws of the state show that the accused could not enforce in the courts of the state or part of the state where the cause was pending any right secured to him by any law providing for the equal civil rights of citizens of the United States. (Smith v. State of California, 162 U. S. 592.)

Denial of civil rights—Proceedings for removal.

—Under this section each defendant may alone remove the cause. (State v. Common Pleas, 15 Ohio St. 377.) Upon filing a verified petition the party is entitled to a removal as of course (Siebrecht v. Butler, 2 Abb. Pr. N. S. 361; State v. Common Pleas, 15 Ohio St. 377); but the petition must show which of the rights secured under the civil-rights bill have been denied by the State court (State v. Gleason, 12 Fla.

190); it must affirmatively show that the case is of a class described in the statute as removable. (*Patrie v. Murray*, 43 Barb. 323; *Hodson v. Milward*, 3 Grant, 412.) The act provides for removing the whole suit, no matter who the parties are, or what relief is sought. (*Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827.) To entitle defendant to the order of removal there must be some color of substance in the questions (*Jones v. Seward*, 40 Barb. 563); and if counter-affidavits are admitted without objection, he is not entitled to remove if the legal results of the case presented show that he has no rights. (*Short v. Wilson*, 1 Bush, 350.) It is not necessary to obtain the assent of the State court under this section. (*Bell v. Dix*, 49 N. Y. 232.) The jurisdiction of the circuit court under this section was not taken away by the act of 1867. (*Lamar v. Dana*, 10 Blatchf. 34; Fed. Cas. No. 8005.) On petition filed, the federal court is entitled to assert its jurisdiction by proper process, and it is the duty of the State court to yield obedience thereto (*In re Wells*, 3 Woods, 128; Fed. Cas. No. 17386); and if the State court proceeds to try a party in a criminal case after the filing of the petition, the sentence will be void. (*Ex parte Reynolds*, 3 Hughes, 559; Fed. Cas. No. 11720.) The removal authorized is before trial or final hearing, but judicial infractions of constitutional rights, after trial commenced, are left to the revisory power of the federal courts. (*Virginia v. Rives*, 100 U. S. 313; as to second indictment, see *Bush v. Kentucky*, 1 Sup. Ct. Rep. 625.) A suit to try title to a State office cannot be removed on the alleged grounds that by bribery and threats colored voters were prevented from voting. (*Dubuclet v. State*, 103 U. S. 550.) An action of ejectment is not within the provisions of this section. (*Bigelow v. Forrest*, 9 Wall. 339; *Martin v. Snowden*, 18 Grant, 100.) A criminal prosecution is not remov-

able because jury commissioners or other subordinate officers have excluded colored citizens from juries because of their race, if this has been done without authority derived from the constitution and laws of the State. (*Murray v. State of Louisiana*, 163 U. S. 101.)

§ 105. When petitioner is in actual custody of State court.—When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said circuit court to issue a writ of *habeas corpus cum causa*, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said circuit court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ. (Rev. Stats. sec. 642.)

Habeas corpus.—The writ of habeas corpus must be allowed by the judge before it can be issued. It may be issued by the circuit court for the purpose of securing jurisdiction. (*In re Wells*, 3 Woods, 128; Fed. Cas. No. 17386.)

§ 106. Removal of suits and prosecutions against revenue officers and officers acting under registration laws.—When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, any such person acting

under or by authority of any such officer on account of any act done under color of his office or of any such law, or on account of any right, title or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or is commenced against any officer of the United States, or other person, on account of any act done under the provisions of Title XXVI, "The Elective Franchise," or on account of any right, title, or authority claimed by such officer or other person under any of said provisions, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court next to be holden in the district where the same is pending, upon the petition of such defendant to said circuit court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said circuit court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the cir-

cuit court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or another process except *capias*, the clerk of the circuit court shall issue a writ of *certiorari* to the State court, requiring it to send to the circuit court the record and proceedings in the cause. When it is commenced by *capias*, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court, or left at his office by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the circuit court, and any further proceedings, trial, or judgment therein in the State court shall be void. And if the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the circuit court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or

prosecution, it is made to appear to the circuit court that no copy of the record and proceedings therein in the State court can be obtained, the circuit court may allow and require the plaintiff to proceed *de novo*, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court. On failure of the plaintiff so to proceed, judgment of *non prosequitur* may be rendered against him, with costs for the defendant. (Rev. Stats. sec. 643.)

Suits against revenue and registration officials in general.—This section is not in conflict with the Constitution (Venable v. Richards, 1 Hughes, 326; Fed. Cas. No. 16913; Tennessee v. Davis, 100 U. S. 257; State v. Port, 3 Fed. Rep. 119; 4 Woods, 513; Findley v. Satterfield, 3 Woods, 504; Fed. Cas. No. 4792; State v. Hoskins, 77 N. C. 530; State v. Davis, 12 S. C. 528), and is not superseded by the act of March 3, 1875. (Venable v. Richards, 4 Morr. Trans. 689.) Similar provisions are to be found in the act of July 13, 1866, relating to internal taxation, and in the act of March 2, 1833, providing for the collection of duties on imports. (Venable v. Richards, 4 Morr. Trans. 689.) This section contemplates a change of tribunal and not of prosecuting officers. (State v. Emerson, 8 Fed. Rep. 411.) The object being to take from the State court jurisdiction of all cases that fall within its terms as soon as they are commenced. (State v. Port, 3 Fed. Rep. 121; 4 Woods, 513.) The jurisdiction of the circuit court in original suits between citizens of the same State in internal revenue cases conferred by the act of June 30, 1864, was taken away by the act of July 13, 1886 (Ins. Co. v. Ritchie, 5 Wall. 541); but it is saved by the latter act, if the justice of the cir-

cuit court is of opinion that the cause would be removable under such act. (*City of Philadelphia v. The Collector*, 5 Wall. 720.) This section was previously held to be in force as to the removal of revenue causes, except those arising under the internal revenue laws. (*Peyton v. Bliss*, 1 Woolw. 170; Fed. Cas. No. 11055; *Stevens v. Mack*, 5 Blatchf. 514; Fed. Cas. No. 13404.) A removal under this section does not bring with it the State law as to costs. They are subject to the twelfth section of the Judiciary Act. (*Wood v. Matthews*, 2 Blatchf. 370; Fed. Cas. No. 17955.) The government is responsible for clerk's charges for necessary services on the removal of election cases. (*In re Clerk's Charges*, 5 Fed. Rep. 440.) Where plaintiff appeals, defendant cannot remove. (*Brice v. Sommers*, 8 Chic. L. N. 290; Fed. Cas. No. 1856.) Any law which provides for the assessment and collection of a tax to defray the expenses of government is a revenue law. (*Peyton v. Bliss*, 1 Woolw. 170; Fed. Cas. No. 11055; see *Warner v. Fowler*, 4 Blatchf. 311; Fed. Cas. 17182.) So an act that imposes a direct tax is a revenue law. (*Peyton v. Bliss*, 1 Woolw. 170; Fed. Cas. No. 11055.) The duty paid for the carriage of letters by the agency of the government is a branch of the public revenue. (*Warner v. Fowler*, 4 Blatchf. 311; Fed. Cas. No. 17182.) A suit against an officer may be removed, although he is sued individually, and is sought to be held as a wrongdoer. (*Van Zandt v. Maxwell*, 2 Blatchf. 421; Fed. Cas. No. 16884.) So an action of slander against a revenue officer is removable (*Buttner v. Miller*, 1 Woods, 620; Fed. Cas. No. 2254); or an action against a collector of internal revenue to recover money alleged to have been illegally exacted (*Philadelphia v. Collector*, 5 Wall. 720; *Salt Co. v. Wilkinson*, 8 Blatchf. 30; Fed. Cas. No. 12269; contra, *Stevens v. Mack*, 5 Blatchf. 514; Fed. Cas. No.

18404); or against a postmaster for a wrongful refusal to deliver a letter. (Warner v. Fowler, 4 Blatchf. 311; Fed. Cas. No. 17182.) The right to remove is given in any case provided for without regard to the amount in controversy (Wood v. Matthews, 2 Blatchf. 370; Fed. Cas. No. 17955), and without regard to the expense or inconvenience of the parties. (Wood v. Matthews, 2 Blatchf. 370; Fed. Cas. No. 17955.) A suit by an informer against a collector to recover a share of a forfeiture may be removed. (Van Zandt v. Maxwell, 2 Blatchf. 421; Fed. Cas. No. 16884.) A commissioner sued for fees illegally exacted cannot remove the suit. (Benchley v. Gilbert, 8 Blatchf. 147; Fed. Cas. No. 1291.) A member of a returning board is a State officer. (Ex parte Anderson, 3 Woods, 124; Fed. Cas. No. 349.) A marshal sued for trespass in taking goods on execution cannot remove. (McKee v. Rains, 10 Wall. 22.) A summary proceeding by a landlord to recover from a lessee possession of premises used as a bonded warehouse, to which proceeding the collector of internal revenue is joined as a defendant, and described as an undertenant holding over, is removable. (Gallatin v. Sherman, 77 Fed. Rep. 337.)

Criminal cases involving revenue and registration officials.—This section applies to criminal cases where the defense arises under a law of the United States. (Findley v. Satterfield, 3 Woods, 504; Fed. Cas. No. 4792; State v. Davis, 12 S. C. 528.) A criminal proceeding is not commenced till the warrant is issued (State v. Port, 3 Fed. Rep. 117; 4 Woods, 513); but is commenced as soon as the warrant is issued (State v. Bolton, 11 Fed. Rep. 217); and when the warrant is issued it is removable, although issued by a justice of the peace. (State v. Port, 3 Fed. Rep. 117; 4 Woods, 513; State v. Bolton, 11 Fed. Rep. 217.) If

removed after arrest and before commitment, the preliminary examination may be taken before the court (State v. Port, 3 Fed. Rep. 117; 4 Woods, 513); and if removed before indictment, the indictment may be found by the grand jury of the circuit court. (State v. Port, 3 Fed. Rep. 117; 4 Woods, 513.) A party indicted in a State court for an action done under color of the revenue laws may remove the cause into the federal court (Georgia v. O'Grady, 3 Woods, 496; Fed. Cas. No. 5352; Findley v. Satterfield, 3 Woods, 504; Fed. Cas. No. 4792; Tennessee v. Davis, 100 U. S. 257; State v. Hoskins, 77 N. C. 530); but a person indicted for maintaining a nuisance under the laws of a State cannot remove the cause. (Commonwealth v. Casey, 12 Allen (Mass.), 214.) If a criminal case is removed, it must be determined according to the law of the State. (Tennessee v. Davis, 100 U. S. 257; Georgia v. O'Grady, 3 Woods, 496; Fed. Cas. No. 5352; Findley v. Satterfield, 3 Woods, 504; Fed. Cas. No. 4792.)

Practice in removal cases involving revenue and registration officials.—Under this section a removal may be had without regard to the amount in controversy. (Wood v. Matthews, 2 Blatchf. 370; Fed. Cas. No. 17955.) The proceedings are confined to action in circuit court; the statute addresses the State court wholly by inhibition. (Fisk v. Union Pac. R. Co., 6 Blatchf. 362; Fed. Cas. No. 4827.) The jurisdiction depends upon the petition verified by petitioner. (Virginia v. Paul, 148 U. S. 107.) All that the statute requires is that it shall appear from the petition that defendant was sued on account of acts done by him under the laws of the United States (Abranches v. Schell, 4 Blatchf. 256; Fed. Cas. No. 21); and the petition must show a case arising under such laws, and must show a defense thereto that upon the facts it

may appear that some material question may arise under those laws. (*Salem & Lowell R. Co. v. Boston & Lowell R. Co.*, 21 Law Reporter, 210; Fed. Cas. No. 12249.) It must specify the act done (*Ex parte Anderson*, 3 Woods, 124; Fed. Cas. No. 349), but it need not state the particular process or writ. (*Abranches v. Schell*, 4 Blatchf. 256; Fed. Cas. No. 21.) This act applies to every case where the offense alleged is committed under the color of office (*Venable v. Richards*, 1 Hughes, 326; Fed. Cas. No. 16913; *Findley v. Satterfield*, 3 Woods, 504; Fed. Cas. No. 4792); and the question whether property was seized by defendant in the performance of his official duties is a matter involved in the merits, and not to be raised on a motion to dismiss the suit. (*Wood v. Matthews*, 2 Blatchf. 370; Fed. Cas. No. 17955.) A suit against a United States officer is not removable under the act of 1833, on the ground that the act complained of was done under the instructions of the treasury department. (*Victor v. Cisco*, 5 Blatchf. 128; Fed. Cas. No. 16934; but see *Benchley v. Gilbert*, 8 Blatchf. 147; Fed. Cas. No. 1291; *Salt Co. v. Wilkinson*, 8 Blatchf. 30; Fed. Cas. No. 12269.) The statute requires, when the proper petition and certificate have been filed, that the clerk shall file said petition, and "shall enter" the cause upon the docket of the circuit court as pending, and "shall issue" duplicate writs, etc. (*In re Clarke's Charge*, 5 Fed. Rep. 441.) The criminal prosecution is commenced within the meaning of this section only when an indictment is found (*Virginia v. Paul*, 148 U. S. 107); and the filing of the petition and the service on the State court of a duplicate of the writ of habeas corpus cum causa, ipso facto removes the prosecution. (*State v. Port*, 3 Fed. Rep. 124; 4 Woods, 513; *Virginia v. Paul*, 148 U. S. 107.) It is the duty of the clerk in vacation to see that the petition contains the averments necessary to bring

the case within the statute. (*Salem & Lowell R. Co. v. Boston & L. R. Co.*, 21 Law Rep. 210; Fed. Cas. No. 12249.) If a federal court has without authority of law assumed jurisdiction of an indictment found in the courts of the State, the State is entitled to have the prosecution remanded to its courts by a writ of mandamus directed to the judge who has so unlawfully assumed jurisdiction. (*Virginia v. Paul*, 148 U. S. 107.)

§ 107. Removal of suits by aliens against United States officers.—Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or, at the time the alleged action accrued, was a civil officer of the United States, being a non-resident of that State wherein jurisdiction is obtained by the State court by personal service of process, such action may be removed into the circuit court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a State court by the provisions of the preceding section. (Rev. Stats. sec. 644.)

Enforcing removal by United States officers.—Certiorari will lie to bring the record, and if the defendant is in custody, habeas corpus lies to bring the party. (*State v. Hoskins*, 77 N. C. 530; see *Commonwealth v. Casey*, 12 Allen (Mass.), 214; *People v. Murray*, 5 Parker Cr. C. 577.) They issue for these purposes only (*Abranches v. Schell*, 4 Blatchf. 256; Fed. Cas. No. 21), and their issuance is only a mode of notification to the State court. (*Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827.) Service by

leaving a duplicate with the clerk of the State court is sufficient (*Abranches v. Schell*, 4 Blatchf. 256; Fed. Cas. No. 21); and if delivered to or left at the office of the clerk, the case is ipso facto removed (*Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827), and no return is necessary. (*Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827.) An application for a certiorari must state facts sufficient to show a cause within the provision of the statute; it is not sufficient to state facts generally, as that he intends to rely on the revenue laws of the State. (*Salem & Lowell R. Co. v. Boston & L. R. Co.*, 11 The Reporter, 210.) A criminal case cannot be removed before indictment found. (*Commonwealth v. Artman*, 3 Grant, 436.) The prosecution in cases of murder is not commenced before accused is called to answer for the offense. (*Georgia v. O'Grady*, 3 Woods, 496; Fed. Cas. No. 5352.) It extends to an action against a postmaster for the wrongful refusal to deliver a letter (*Warner v. Fowler*, 4 Blatchf. 311; Fed. Cas. No. 17182; *Wilson v. Pearson*, 13 Fed. Rep. 386; 21 Blatchf. 113); as post-office laws are revenue laws. (*Warner v. Fowler*, 4 Blatchf. 311; Fed. Cas. No. 17182.) Cases arising under a direct tax law are movable. (*Peyton v. Bliss*, 1 Woolw. 170; Fed. Cas. No. 11055.) The collector of customs, if served with a foreign attachment, may remove the cause. (*Fischer v. Daudistal*, 9 Fed. Rep. 145.) A suit against a collector for slander (*Buttner v. Miller*, 1 Woods, 620; Fed. Cas. No. 2254), or to recover back duties illegally exacted, may be removed. (*Coggill v. Lawrence*, 2 Blatchf. 304; Fed. Cas. No. 2957.) A collector who withholds from an informer proceeds of goods forfeited for violation of the revenue laws, may remove the suit. (*Van Zandt v. Maxwell*, 2 Blatchf. 421; Fed. Cas. No. 16884.)

§ 108. **Removal proceedings—Petition, when filed.**—That whenever any party entitled to remove any suit mentioned in the next preceding section, except in such cases as are provided for in the last clause of said section, may desire to remove such suit from a State court to a circuit court of the United States, he may make and file a petition in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought, to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the circuit court, to be held in the district where such suit is pending. (25 U. S. Stats. 433.)

“From any State court.”—The act does not apply to a suit brought in a territorial court, although on the admission of such Territory as a State such suit passed into the jurisdiction of the State court. (*Ames v. Colorado Cent. R. Co.*, 4 Dill. 251; *Fed. Cas. No. 324.*) A cause may be removed from any State court, whether of limited or general jurisdiction, if citizenship and amount are within the statute provisions (*Gaines v. Fuentes*, 92 U. S. 10; *S. C. 3 Cent. L. J. 371*; *8 Chic. L. N. 225*); but a justice's court is not deemed a State court. (*Rathbone Oil Co. v. Rauch*, 5 W. Va. 79.) An action brought by the District of Columbia against an alien cannot be removed. (*Cessel v. McDonald*, 57 How. Pr. 175; *S. C. 16 Blatchf. 150*; *Fed. Cas. No. 2729.*) A board of commissioners of a county is not a State court. (*Fuller v. Co. of Colfax*, 14 Fed. Rep. 177; *4 McCrary, 535.*) The circuit court for the district within the territorial limits in which the suit is pending is in the “proper dis-

trict." (*Knowlton v. Congress & Empire S. Co.*, 13 Blatchf. 170; Fed. Cas. No. 7902.)

Application for removal.—A case cannot be removed on a mere stipulation. (*Kingsbury v. Kingsbury*, 3 Biss. 60; Fed. Cas. No. 7817.) Neither an infant nor his guardian can consent to a removal (*Kingsbury v. Kingsbury*, 3 Biss. 60; Fed. Cas. No. 7817), as consent will not confer jurisdiction (In re *Hopkins*, 18 Bank. Reg. 339; Fed. Cas. No. 6684), nor can a removal be effected by filing the petition and bond, without any action of the court. (*Scott v. Otis*, 10 Chic. L. N. 41; Fed. Cas. No. 12543.) The application does not constitute a waiver of the use and service of proper papers. (*Parrott v. Alabama Gold L. Ins. Co.*, 5 Fed. Rep. 391; 4 Woods, 353.) A party seeking a removal must do all that is necessary to secure it (*Clippinger v. Mo. Val. L. Ins. Co.*, 1 Flippin, 456; Fed. Cas. No. 2901); and the discretion of the court in passing on the question as to the necessary steps being properly taken is a legal discretion. (*Hatch v. Chicago R. I. etc. R. Co.*, 6 Blatchf. 105; Fed. Cas. No. 6204.) The case is removable, though erroneously applied for under the provisions of section six hundred and thirty-nine, Revised Statutes (*Norris v. Mineral Point Tunnel*, 7 Fed. Rep. 272; 19 Blatchf. 201.) A notice of the application is not necessary. (*McLean v. Chicago etc. R. Co.*, 16 Blatchf. 609; *Stevens v. Richardson*, 9 Fed. Rep. 191; 20 Blatchf. 53; contra, *Bristol v. Chapman*, 34 How. Pr. 140; *Disbrow v. Driggs*, 8 Abb. Pr. 305, note.) The State court cannot cause the application to be entered nunc pro tunc so as to entertain a motion for removal. (*Ward v. Arredondo*, 1 Paine, 410; Fed. Cas. No. 17148.) A party does not lose his right to insist on a removal, by a voluntary appearance (*Stevens v. Richardson*, 9

Fed. Rep. 191; 20 Blatchf. 53); but proceeding to trial without calling the attention of the court to the petition and bond for removal is deemed a waiver of the right. (*Home Ins. Co. v. Curtis*, 32 Mich. 402.) The filing of a petition for removal is a sufficient application. (*La Mothe Manuf. Co. v. Nat. Tube Works*, 15 Blatchf. 432; Fed. Cas. No. 8033.) The federal court will treat as a party to a suit upon an application for removal one who is entitled to be made a party but whose right is wrongfully denied by the State court. (*Hack v. Chicago & Great Southern Ry. Co.*, 23 Fed. Rep. 356.) Parties having the right to intervene in a pending suit in a State court, but who have been refused leave may, nevertheless, if otherwise they would have been entitled to do so, remove the suit to the federal court. (*Snow v. Texas Trunk Ry. Co.*, 16 Fed. Rep. 1.) A party does not by voluntarily appearing in a suit in a State court, waive his right of removal to the federal court. (*Stevens v. Richardson*, 20 Blatchf. 53; 9 Fed. Rep. 191.) The amending of the application for removal so as to show jurisdiction is within the discretion of the court. (*McNaughton v. Southern Pac. Coast R. Co.*, 19 Fed. Rep. 881.)

Petition for removal.—A petition is a request in writing in contradistinction to a motion which may be made *viva voce*. (*Shaft v. Phoenix M. L. Ins. Co.*, 67 N. Y. 544; 23 Am. Rep. 138.) The office of the petition is to set on foot proceedings to obtain a removal. It must contain such averments as entitle to relief (*De Camp v. N. J. M. L. Ins. Co.*, 2 Sweeney, 481), and such as are positive and express the facts on which it depends, and not argumentative. (*Brown v. Keene*, 8 Peters, 112; citing *Bingham v. Cabbot*, 3 Dall. 19, 382; *Abercrombie v. Dupins*, 1 Cranch, 343; *Wood v. Wagnan*, 2 Cranch, 9; *Capron v. Van Noor-*

den, 2 Cranch. 126.) It should point out what the question is, and how and where it will arise (*Trafton v. Nougues*, 4 Sawy. 178; *Fed. Cas. No. 14134*), and state such facts as show to the court that the case falls within the category of removable causes. (In *re Anderson*, 3 Woods, 124; *Fed. Cas. No. 349*; *McMurdy v. Ins. Co.*, 4 *Week. Ins. Cas.* 18; *Fed. Cas. No. 8903*; *Tunstall v. Madison Parish*, 30 *La. An.* 471; *Lalor v Dunning*, 56 *How. Pr.* 209.) The petition must set forth the jurisdictional facts. (*Smith v. Horton*, 7 *Fed. Rep.* 270.) The facts upon which the petitioner bases his right must be made to appear, but no particular mode is prescribed. It may be by admission of parties, by affidavit, or by the testimony of witnesses (*People v. Superior Court*, 34 *Ill.* 356); but where the petition fails to show that the case is removable, the court should deny the application. (*Weed Sewing Machine Co. v. Smith*, 71 *Ill.* 204; *U. S. Sav. Inst. v. Brockschmidt*, 72 *Ill.* 370; *New Orleans etc. Co. v. Recorder etc.*, 27 *La. Ann.* 291; *McWhinney v. Brinker*, 64 *Ind.* 360; *Liverpool Ins. Co. v. McGuire*, 52 *Miss.* 227; *Hartford F. Ins. Co. v. Green*, 52 *Miss.* 332; *Blair v. West Point etc. Co.*, 7 *Neb.* 146.) The right of removal is statutory, and the party applying must show upon the record that the case is one which comes within the provisions of the statute. (*Amory v. Amory*, 95 *U. S.* 186.) The petition when filed becomes a part of the record. It should state facts which, taken in connection with such as already appear, entitle him to a removal. (*Amory v. Amory*, 95 *U. S.* 186. See *New Orleans etc. R. Co. v. Mississippi*, 102 *U. S.* 135.) When the petition for removal shows that defendant is a corporation of another State, it need not allege that it is a nonresident of the State where suit is brought and of which plaintiff is a citizen. (*Wilcox & Gibbs G. Co. v. Phoenix Ins. Co.*, 60 *Fed. Rep.* 929.) If the

complaint fails to state a federal question, a cause cannot be removed on the ground that such a question is involved, even though the petition for removal shows such a question. (*Chappell v. Waterworth*, 155 U. S. 102; *Postal Tel. Cable Co. v. State of Alabama*, 155 U. S. 482; *State of Tennessee v. Union & Planter's Bank*, 152 U. S. 454; *Oregon Short Line & U. N. Ry. Co. v. Skottowe*, 162 U. S. 490; *Galveston H. & S. A. R. Co. v. State of Texas*, 170 U. S. 226; *Wabash Ry. Co. v. Barbour*, 43 U. S. App. 102; 73 Fed. Rep. 513; *State of Florida v. Harbor Phosphate Co.*, 41 U. S. App. 405; 74 Fed. Rep. 578; *Wichita Nat. Bank v. Smith*, 36 U. S. App. 530; 72 Fed. Rep. 568; *State of Indiana v. Allegheny Oil Co.*, 85 Fed. Rep. 870; *State of Kansas v. Atchison T. & S. Fe Ry. Co.*, 77 Fed. Rep. 339; *City of Lincoln v. Lincoln Ry. Co.*, 77 Fed. Rep. 658; *Argonaut Min. Co. v. Kennedy Min. Co.*, 84 Fed. Rep. 1; *Caples v. Texas & P. Ry. Co.*, 67 Fed. Rep. 9; *Haggin v. Lewis*, 66 Fed. Rep. 199.) Where the fact of nonresidence sufficiently appears on the record, it need not be shown by petition. (*Boudourant v. Watson*, 2 Morr. Trans. 479.) It is necessary to show as well that suit was commenced "by a citizen of a State in which the suit is brought," as that it was commenced "against a citizen of another State" (*Holden v. Putnam F. Ins. Co.*, 46 N. Y. 1); so stating that plaintiff "is a citizen" is sufficient (*Holden v. Putnam F. Ins. Co.*, 46 N. Y. 1); so an averment that he is a resident of the State is not sufficient (*Parker v. Overman*, 18 How. 137; *Darst v. Bates*, 51 Ill. 439; *Corp v. Vermilye*, 3 Johns. 145; *Martin v. Coons*, 24 La. An. 169; *Beebe v. Armstrong*, 11 Mart. 440.) That a corporation was formed under the laws of a State, and is a resident thereof, is sufficient (*Rathbone Oil Tract Co. v. Rauch*, 5 W. Va. 79), as is an allegation that it was "chartered and incorporated under the laws of Great Britain." (*Robert-*

son v. Scottish Union & Nat. Ins. Co., 68 Fed. Rep. 173; Shattuck v. North British & M. Ins. Co., 19 U. S. App. 215; 58 Fed. Rep. 609.) Where the petition states that the plaintiffs "as executors" are citizens of the State, it is insufficient as to personal citizenship. (Amory v. Amory, 95 U. S. 186.) That petitioner is not a resident of the State is not sufficient for the expression of nonresident (Eastin v. Rucker, 1 Marsh. J. J. 232), nor is a mere averment that petitioner is an alien or a citizen of another State (Welch v. Tennent, 4 Cal. 203; Savings Bank v. Benton, 2 Met. [Ky.] 240); but an averment that the defendant is a citizen of the southern district of Alabama is a sufficient averment of citizenship of Alabama (Berlin v. Jones, 1 Woods, 638; Fed. Cas. No. 1343); but the allegation that the plaintiff is a citizen of a certain county is not sufficient allegation of citizenship. (Pechner v. Phoenix Ins. Co., 95 U. S. 183; Carsley v. Schley, 59 Ga. 17; but see Stoker v. Leavenworth, 7 La. 390.) But where the laws of the State defining citizenship taken in connection with the petition for removal show jurisdictional facts the petition may be amended. (Tremper v. Schwabacher, 84 Fed. Rep. 413.) The petition must state the citizenship of the parties, unless it sufficiently appears on the record. (Insurance Co. v. Francis, 11 Wall. 210; Welch v. Tennent, 4 Cal. 203; Harrison v. Shorter, 59 Ga. 512; Insurance Co. v. McGuire, 52 Miss. 227; Hartford F. Ins. Co. v. Green, 52 Miss. 332; Phoenix L. Ins. Co. v. Saettel, 33 Ohio St. 278; Savings Bank v. Benton, 2 Met. (Ky.) 240.) The averment that certain of the petitioners, "as they are the qualified executors," were and are citizens, is an averment of their personal citizenship. (Cooke v. Seligman, 7 Fed. Rep. 263; 17 Blatchf. 452.) But under the act of 1875 the petition need not state that plaintiff was, at the date of the commencement of the suit, a citizen of a State

other than that of which defendant is a citizen, if the requisites of citizenship exist at the time of filing the petition. (*McLean v. St. Paul etc. R. Co.*, 16 Blatchf. 309; *Fed. Cas. No. 8892*; see also *Jackson v. Mutual Ins. Co.*, 3 Woods, 413; *Fed. Cas. No. 7141*; *S. C.*, 60 Ga. 423; *Johnson v. Monell*, Woolw. 390; *Fed. Cas. No. 7399*; *McGinnity v. White*, 3 Dill. 350; *Fed. Cas. No. 8802*.) It is otherwise under the judiciary act, where it must be affirmatively shown that the requisite citizenship existed at the commencement of the action. (*Weed Sew. Mach. Co. v. Smith*, 71 Ill. 204; *Beebe v. Cheney*, 11 The Reporter, 360; *Ins. Co. v. Pechner*, 95 U. S. 183; *S. C.* 6 Lans. 411; *Savings Bank v. Benton*, 2 Met. [Ky.] 240; *U. S. Sav. Inst. v. Brockschmidt*, 72 Ill. 370; *Indianapolis B. & W. R. Co. v. Risley*, 50 Ind. 60; *Holden v. Putnam*, 46 N. Y. 1; *Kaeiser v. Illinois Cent. R. Co.*, 6 Fed. Rep. 1; 2 *McCrary*, 187; but see *People v. Superior Court*, 34 Ill. 356.) The petition of an intervenor is sufficient if it avers citizenship in the present tense. (*Burdick v. Peterson*, 6 Fed. Rep. 840; 2 *McCrary*, 135.) The omission to state that plaintiff is a citizen of the State where suit is brought may be supplied subsequently. (*Field v. Blair*, 1 Code Rep. N. S. 361.) Where all the plaintiffs have the requisite citizenship, any one interested may move, but the petition must set out all the facts (*Carswell v. Schley*, 59 Ga. 17); and under the judiciary act, all must join in the petition. (*Fallis v. McArthur*, 1 Bond, 100; *Fed. Cas. No. 4627*; *Vandervoort v. Palmer*, 4 Duer, 677; *Calderwood v. Hager*, 20 Cal. 167; *Norton v. Hayes*, 4 Denio, 245; *Bryan v. Ponder*, 23 Ga. 480; *W. A. & G. R. Co. v. A. & W. R. Co.*, 19 Gratt. 592; *Davis v. Cook*, 9 Nev. 134; *Pugsley v. F. S. & T. Co.*, 2 Tenn. Ch. 130.) Where the removal is sought on the ground of citizenship, the petition must allege that all the defendants uniting are of a different citizenship from

the plaintiffs. (*Chester v. Chester*, 7 Fed. Rep. 1; *Smith v. Horton*, 11 The Reporter, 423; *Meyer v. Delaware Constr. Co.*, 100 U. S. 457.) It is no objection that the petition and bond are not signed by the petitioner. (*Vandevoort v. Palmer*, 4 Duer, 677; contra, *Kirkpatrick v. Hopkins*, 2 Miles, 277; *Best v. N. Y. L. Ins. Co.*, 2 Cin. Rep. 329; *Meyer v. Delaware R. Co.*, 100 U. S. 457.) They may be signed and verified by an agent or attorney. (*McLean v. St. Paul etc. R. Co.*, 16 Blatchf. 309; Fed. Cas. No. 8892; *Cooke v. Seligman*, 7 Fed. Rep. 263; 17 Blatchf. 482; *Dennis v. Alachua Co.*, 3 Woods, 683; Fed. Cas. No. 3791; *Vandevoort v. Palmer*, 4 Duer, 677; *Wormser v. Dahlgren*, 57 How. Pr. 286; 16 Blatchf. 319; Fed. Cas. No. 18048; *Rosenfeld v. Adams Express Co.*, 21 La. An. 233; *Sweeney v. Coffin*, 1 Dill. 73; Fed. Cas. No. 13686.) Nor need the petition be filed personally. (*Fisk v. Fisk*, 4 Martin, N. S. 676; *Cooke v. Seligman*, 7 Fed. Rep. 263; 17 Blatchf. 452.) Under the judiciary act it is not sufficient that the petition be signed by the corporation's attorney at law. (*Kirkpatrick v. Hopkins*, 2 Miles, 277.) The petition need not be sworn to; the statute does not expressly require the petition to be verified by affidavit; the mere filing of the petition and bond removes it ipso facto. (*Allen v. Ryerson*, 2 Dill. 501; Fed. Cas. No. 235; *Connor v. Scott*, 4 Dill. 242; Fed. Cas. No. 3119; *Bowen v. Chase*, 7 Blatchf. 255; Fed. Cas. No. 1720; *Sweeney v. Coffin*, 1 Dill. 73; Fed. Cas. No. 13686; *Merchant's etc. Bank v. Wheeler*, 13 Blatchf. 218; Fed. Cas. No. 9439; *Houser v. Clayton*, 3 Woods, 273; Fed. Cas. No. 6739; *Osgood v. C. D. & V. R. Co.*, 6 Biss. 330; Fed. Cas. No. 10604.) If made on notice, and the averments are not denied, it will be taken as true, and proof may be adduced if the averments are denied. (*De Camp v. N. J. M. L. Ins. Co.*, 2 Sweeney, 481.) When the facts set forth on a petition make a case, a mis-

take in referring to the statute is unimportant. (*Norris v. Mineral Point Tun. Co.*, 11 *The Reporter*, 693; *Dart v. Walker*, 43 *How. Pr.* 29; *Minnett v. M. & St. P. R. Co.*, 3 *Dill.* 460; *Fed. Cas. No. 9636*; *Stanley v. Chicago R. I. & P. R. Co.*, 62 *Mo.* 508; *Goodrich v. Hunton*, 29 *La. An.* 372.) Under the judiciary act the exact language of the statute should be followed in stating the grounds. (*Railway Co. v. Ramsey*, 22 *Wall.* 328.) The omission to refer to any special law under which the removal is demanded cannot prejudice the right (*Goodrich v. Hunton*, 29 *La. An.* 372); and a case is removable although erroneously prayed under the statute (*Norris v. Mineral Point Tunnel*, 7 *Fed. Rep.* 272); but where the prayer of the petition does not ask for the removal of the entire suit, the cause will be remanded. (*Clark v. Chicago M. & St. P. R. Co.*, 11 *Fed. Rep.* 355; 3 *McCrary*, 591; *Sweet v. Same*, 11 *Fed. Rep.* 355; 3 *McCrary*, 591.) An exception to the jurisdiction, and a prayer that the action be dismissed, is not a proper petition. (*Webre v. Duroc*, 15 *La. An.* 65.) A second petition does not constitute an abandonment of the first (*Tunstall v. Madison*, 30 *La. An.* 471); but if a case has been once removed, and then remanded because insufficient, the party cannot file a second petition. (*Eastin v. Rucker*, 1 *Marsh. J. J.* 232.) If a petition be defective, it may be amended, as a matter of right (*Delaware R. R. C. Co. v. D. & St. P. R. Co.*, 46 *Iowa*, 406; *Houser v. Clayton*, 3 *Woods*, 273; *Fed. Cas. No. 6739*); and if not verified, a verified petition may be filed. (*Houser v. Clayton*, 3 *Woods*, 273; *Fed. Cas. No. 6739*.) A verified petition must state that defendants have a defense arising under and by virtue of the constitution, treaty, or law of the United States. (*Osborn v. U. S. Bank*, 9 *Wheat.* 738.) The petition may be filed in vacation. (*Osgood v. C. D. & V. R. Co.*, 6 *Biss.* 330; *Fed. Cas. No. 10604*.) A pe-

tion for the removal of a cause from a State court should set out the facts on which the right is claimed, and not the conclusions of law only. (*Carson v. Dunham*, 121 U. S. 421; *Hambleton v. Duham*, 22 Fed. Rep. 485.) And see as to sufficiency of petition: (*Adams v. May*, 27 Fed. Rep. 907; *McLane v. Leicht*, 27 Fed. Rep. 887; *Rothschild v. Matthews*, 22 Fed. Rep. 6.) The allegations of the petition for removal are jurisdictional, and they must be positive and certain. (*Wolff v. Archibald*, 14 Fed. Rep. 396.) If the petition for removal fails to state all the facts, but refers to the pleadings in the State courts, the federal court will look to them. (*McLane v. Leicht*, 27 Fed. Rep. 887.) Citizenship if shown by the record need not be set out in the petition for removal. (*Steamship Co. v. Tugman*, 106 U. S. 118.) A petition presented to the federal court with the removal papers and alleging facts not stated in the petition to the State court, cannot be looked to as conferring jurisdiction, if the latter petition does not state sufficient grounds for removal. (*Waite v. Phoenix Ins. Co.*, 62 Fed. Rep. 769.) If the citizenship of plaintiff's assignor is material, it need not be specifically alleged in the petition, when it sufficiently appears in other parts of the record. (*Shattuck v. North British & M. Ins. Co.*, 19 U. S. App. 215; 58 Fed. Rep. 609.) An averment of residence is not an averment of citizenship for the purposes of jurisdiction. (*Timmons v. Elyton Land Co.*, 139 U. S. 378; *Godfrey v. Terry*, 97 U. S. 171; *Menard v. Goggan*, 121 U. S. 253; *Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App. 45; 59 Fed. Rep. 727.) A petition which, simply states what was defendant's citizenship at its date, and not what it was at the commencement of the suit, is insufficient. (*Phoenix Ins. Co. v. Pechner*, 95 U. S. 183.) There must be a distinct statement of the citizenship of the parties

and of the particular State in which it is claimed in order to sustain the jurisdiction. (*Robertson v. Cease*, 97 U. S. 646; *Mattingly v. Northwestern Virginian R. R. Co.*, 158 U. S. 53.) A petition for removal which shows on its face a right to remove may only be amended in the circuit court by setting forth in proper form what had been before improperly stated. (*Carson v. Dunham*, 121 U. S. 421; *Tremper v. Schwabacher*, 84 Fed. Rep. 413; *Johnson v. Austin Mfg. Co.*, 76 Fed. Rep. 616; *Martin's Admrs. v. Baltimore & O. Ry. Co.*, 151 U. S. 673; *Powers v. Chesapeake & Ohio Ry. Co.*, 169 U. S. 92; *Ibid*, 65 Fed. Rep. 129; but see *De Loy v. Traveler's Ins. Co.*, 59 Fed. Rep. 319.) Where a petition for removal by a corporation of one State sued in another alleges that fact, it sufficiently shows that the removal is sought by a nonresident of the latter State. (*Myers v. Murray*, 43 Fed. Rep. 695; *Wilcox & Gibbs G. Co. v. Phoenix Ins. Co.*, 60 Fed. Rep. 929.) An allegation that the "company was chartered and incorporated under the laws of Great Britain," is sufficient. (*Robertson v. Scottish Union & Nat. Ins. Co.*, 68 Fed. Rep. 173; *Shattuck v. North British & M. Ins. Co.*, 19 U. S. App. 213; 58 Fed. Rep. 609.) If a proper allegation of citizenship appears in the petition for removal it is not necessary that the diverse citizenship should appear on the face of the complaint. (*City of Ysleta v. Canda*, 67 Fed. Rep. 6.) The petition must show diversity of citizenship both when the suit was begun and when the petition for removal was filed. (*Foster v. Paragould S. E. R. Co.*, 74 Fed. Rep. 273.)

Effect of proceedings for removal.—Presenting a petition initiates the removal, and leaves the State court no jurisdiction to take any proceedings other than to perfect the removal (*Fisk v. Union Pac. R. Co.*, 8 Blatchf. 248; *Fed. Cas. No. 4828*); and the State court has no jurisdiction to deny the application

(Hatch v. Chicago R. I. & P. R. Co., 6 Blatchf. 105; Fed. Cas. No. 6204; Gordon v. Longest, 16 Peters, 97; Shepherd v. Bradstreet Co., 65 Fed. Rep. 142; Livermore v. Jenks, 11 How. Pr. 479; James v. Thurston, 6 R. I. 428; Ficklin v. Tarver, 59 Ga. 263; Akerly v. Vilas, 2 Biss. 110; Fed. Cas. No. 119); except when, as a matter of law, on the face of the petition, it appears that the right does not exist (Powers v. Chesapeake Ry. Co., 65 Fed. Rep. 129; Springer v. Howes, 69 Fed. Rep. 849), the statute requiring it to accept the petition and bond, and proceed no farther in the cause. (Manville v. W. U. Tel. Co., 2 Cent. L. J. 616.) Where a removal is authorized by the facts of the case, jurisdiction ceases and attaches in the circuit court, and all further proceedings in the State court are coram non iudice. (New York Silk Manuf. Co. v. Second Nat. Bk., 10 Fed. Rep. 204.) The jurisdiction of the State court is ousted when the proceedings are regular (Shaft v. Phoenix Mut. L. Ins. Co., 67 N. Y. 544); and if the petition contains proper averments, and the petitioner complies with the requirements of the law, the removal is a matter of right (Gordon v. Longest, 16 Peters, 97; Fisk v. Union Pac. R. Co., 6 Blatchf. 362; Fed. Cas. No. 4827; Matthews v. Lyall, 6 McLean, 13; Fed. Cas. No. 9285; Edwards v. Ward, 2 Bush, 606; Brown v. Crippin, 4 Hen. & M. 173; Butterfield v. Home Ins. Co., 14 Minn. 410; Kennedy v. Woolfolk, 1 Overton, 453); and the removal is imperative both on the State and the federal court. (Dennistoun v. Draper, 5 Blatchf. 336; Fed. Cas. No. 3804.) The jurisdiction is not ipso facto suspended by the filing of the petition and bond (Nat. Union Bank v. Dodge, 11 The Reporter, 641; Shepherd v. Bradstreet Co., 65 Fed. Rep. 142; contra, In re Iowa & Minn. Min. Co., 10 Fed. Rep. 401; 3 McCrary, 310; Wills v. Baltimore & O. Ry. Co., 65 Fed. Rep. 532; Monroe v. Williamson, 81 Fed. Rep.

977; *Wilcox & G. Guano Co. v. Phoenix Ins. Co.*, 60 Fed. Rep. 929); as the mere filing of the petition and bond, unverified and unaccompanied by any proof of the facts of citizenship relied on, does not oust the State court of its jurisdiction. (*Delaware etc. Co. v. Davenport etc. Co.*, 46 Iowa, 406; *Removal Cases*, 100 U. S. 457; see *Railway Co. v. Ramsey*, 22 Wall. 328.) After the petition is filed, complying with the requisites of the law, plaintiff cannot amend his declaration (*Livermore v. Jenks*, 11 How. Pr. 479) nor dismiss the suit. (*Beery v. Chicago, R. I. & P. R. Co.*, 64 Mo. 533; contra, *Matthews v. Lyall*, 6 McLean, 13; Fed. Rep. No. 9285.) Where a sufficient cause is made, the jurisdiction in the State court is at an end, and the jurisdiction of a federal court attaches; and the fact that only a part of the record is filed will not oust it. (*Clark v. Chicago M. & St. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591; *Sweet v. Same*, 11 Fed. Rep. 355; 3 McCrary, 591; *Railroad Co. v. Mississippi*, 102 U. S. 141.) After presentation of the petition and bond in proper form, the jurisdiction is thereupon changed, and subsequent proceedings in the State court are void. (*Chesapeake etc. R. Co. v. White*, 111 U. S. 134; *Ward v. San Diego Land & T. Co.*, 79 Fed. Rep. 665. Compare *Southern Pac. R. Co. v. Superior Court*, 63 Cal. 607.) Where the party removing a cause fails for a year to file the transcript, and then redockets the cause in the State court and recognizes its jurisdiction, he cannot again remove it on another ground not shown to have existed at first, his delay not being excused. (*Creagh v. Equitable Life Ins. Co.*, 83 Fed. Rep. 849; *Pope v. Cheney*, 22 Fed. Rep. 177; *Phoenix Life Ins. Co. v. Walrath*, 117 U. S. 365.) The filing of a petition and bond for removal is a waiver of the right to object to the jurisdiction on the ground that defendant is a resident of another federal district. (*Creagh*

v. Equitable Life Ins. Co., 83 Fed. Rep. 849.) Where a cause has been remanded for want of a proper allegation of diverse citizenship, a second removal on the same ground is not allowable. (Smith v. Traveler's Ins. Co., 73 Fed. Rep. 513.)

Proceedings in State court.—When the petition is filed, no steps should be taken on the cause until it is acted on. (Fox v. Southern Ry. Co., 80 Fed. Rep. 945; People v. Superior Court, 34 Ill. 356.) State courts have the right to judicially pass, for some purposes at least, upon the sufficiency of an application for removal, and of the accompanying bond. (McWhinney v. Brinker, 64 Ind. 360; Blair v. West Point etc. Co., 7 Neb. 146.) The acceptance or rejection of the petition involves a decision upon its efficiency (Carswell v. Schley, 59 Ga. 17; Lalor v. Dunning, 56 How. Pr. 209; Taylor v. Rockefeller, 35 Leg. Int. 284; Fed. Cas. No. 13802; Mayo v. Taylor, 8 Chic. L. N. 10; Fed. Cas. No. 9357; contra, Jones v. Amazon Ins. Co., 9 Chic. L. N. 68; Dunham v. Baird, 2 Week. Notes, 52; Fed. Cas. No. 4147; Connor v. Scott, 4 Dill. 242; Fed. Cas. No. 3119); and the State court must inspect the documents, and determine whether the conditions apply or not. (Carswell v. Schley, 59 Ga. 17; Meyer v. Delaware Constr. Co., 100 U. S. 457.) An averment that there is a controversy that can be fully determined is not conclusive, but may be investigated (Clark v. Opdyke, 10 Hun, 383); so the court may inquire into the truth of the facts alleged. (Blair v. West Point Mannf. Co., 7 Neb. 146; Burch v. Dav-enport & St. P. R. Co., 46 Iowa, 449; Delaware R. Constr. Co. v. D. & St. P. R. Co., 46 Iowa, 406.) The adverse party may deny the facts set forth in the petition by answer or affidavit, and produce evidence in support of his denial (Orosco v. Gagliardo, 22 Cal. 83; Disbrow v. Driggs, 8 Abb. Pr. 305, note; Tunstall

v. Madison, 30 La. An. 471); matters controverted are the only matters in dispute. (Tunstall v. Madison, 30 La. Ann. 471; Disbrow v. Driggs, 8 Abb. Pr. 305, note; De Camp v. N. J. M. L. Ins. Co., 2 Sweeney, 481.) The court must be satisfied that the application is founded on facts which entitle the applicant to the order (Orosco v. Gagliardo, 22 Cal. 83; People v. Superior Court, 34 Ill. 356; Cooley v. Lawrence, 12 How. Pr. 176; S. C., 5 Duer, 605; New York Piano Co. v. New Haven Steamboat Co., 2 Abb. Pr. N. S. 357; Tunstall v. Madison, 30 La. An. 471; contra, Oakey v. Bank, 14 La. 515; Stoker v. Leavenworth, 7 La. 390); and also that the amount in dispute is sufficient. (Abranches v. Schell, 4 Blatchf. 256; Fed. Cas. No. 21; Turton v. Union Pac. R. Co., 3 Dill. 366; Fed. Cas. No. 14273.) The petitioner should adduce satisfactory evidence at the hearing of the petition (Disbrow v. Driggs, 8 Abb. Pr. 305, note; People v. Superior Court, 34 Ill. 356; Louisiana State Bank v. Morgan, 4 Martin, N. S. 344); and if no satisfactory evidence is adduced of the truth of the facts necessary to give the right to a removal, the prayer of the petitioner must be denied. (People v. Superior Court, 34 Ill. 356.) The fact that the petition for removal and other papers were not marked "filed" before being presented to the court for approval is immaterial when it is shown that they were in the files of the cause and were a part of the record. (Waite v. Phoenix Ins. Co., 62 Fed. Rep. 769.) The State court cannot consider any matter which does not appear on the record, except such as it may judicially take cognizance of. (Savings Bank v. Benton, 2 Met. [Ky.] 240.) Where the petition fails to show that the cause is removable, the court should deny the application. (Weed Sew. Mach. Co. v. Smith, 71 Ill. 204; U. S. Savings Inst. v. Brockschmidt, 72 Ill. 370; McWhinney v. Brinker, 64 Ind. 360; New Orleans etc. Co. v.

Recorder, 27 La. An. 291; Liverpool Ins. Co. v. McGuire, 52 Miss. 227; Hartford F. Ins. Co. v. Green, 52 Miss. 332; Blair v. West Point etc. Co., 7 Neb. 146.) Its jurisdiction is not thereby ousted, nor its subsequent proceedings made erroneous or void. (Gordon v. Longest, 16 Peters, 97; Ins. Co. v. Dunn, 19 Wall. 214; Kanouse v. Martin, 14 How. 23; 15 How. 198; Stevens v. Phoenix Ins. Co., 41 N. Y. 149; Holden v. Putnam Fire Ins. Co., 46 N. Y. 1; Savings Bank v. Benton, 2 Met. [Ky.] 240; Blair v. West Point etc. Co., 7 Neb. 146.) It cannot dismiss the proceedings for nonpayment of a tax imposed by State law (Bragg v. Tibbs, 44 Ga. 294); nor stay proceedings in the federal court, until costs of removal are paid, nor can it issue execution for the costs. (Mayor of New York v. Cooper, 6 Wall. 250; Penrose v. Penrose, 1 Fed. Rep. 479.) The State court may order a new bond to be filed as a substitute for a bond given to release property attached on mesne process. (Ramsey v. Coolbaugh, 13 Iowa, 164.) No notice is required to the adverse party in proceedings for removal. (Creagh v. Equitable Life Assur. Co., 83 Fed. Rep. 849; Chiatovich v. Hanchett, 78 Fed. Rep. 193.) The denial of an application for removal is not prejudicial when the cause is remanded by the federal court to the State court, which has taken on action in the meantime. (Missouri Pac. Ry. Co. v. Fitzgerald, 160 U. S. 556.)

Time to file petition for removal—Generally.—Under the act of 1887 a defendant must file his petition within the time in which, by the laws of the State or the rules of the State court, he is required to file his original answer or plea, and not within the time when he is required or may elect to file an amended answer. (Woolf v. Chisolm, 24 Blatchf. 405.) The petition must be filed in the State court at or before the time at which a plea is due, according to the State

practice. (*Kansas City etc. Ry. Co. v. Daughtry*, 138 U. S. 298; *Wedekind v. Southern Pac. Ry. Co.*, 36 Fed. Rep. 279; *Burnham v. First Nat. Bank*, 10 U. S. App. 485; 53 Fed. Rep. 163; *Martin's Admrs. v. Baltimore & O. Ry. Co.*, 151 U. S. 673.) It is filed in time if filed before or at the time defendant files his plea to the declaration, although the original time allowed by the code has expired, as the right to remove is coextensive with the right to plead in such case. (*Lickhart v. Memphis etc. Ry. Co.*, 38 Fed. Rep. 274; *Gavin v. Vance*, 33 Fed. Rep. 84; *Burck v. Taylor*, 39 Fed. Rep. 581.) The requirement of the statute is complied with by the timely filing of the petition, though, it is not actually presented until after the expiration of the time to plead. (*Burck v. Taylor*, 39 Fed. Rep. 581.) It is the expiration of the time allowed to defend which terminates the right of removal, and the filing of the demurrer, plea, or answer does not shorten the time. (*Gavin v. Vance*, 33 Fed. Rep. 84; *Duncan v. Associated Press*, 81 Fed. Rep. 417; but see *Fidelity Trust & S. V. Co. v. Newport News Co.*, 70 Fed. Rep. 405.) If complainant amends his complaint to a material extent after the time to answer has expired, defendant has as much time after the amendment as he had after the original complaint was filed. (*Evans v. Dillingham*, 43 Fed. Rep. 177; *Mattoon v. Reynolds*, 62 Fed. Rep. 417; *Cookerly v. Great Northern Ry. Co.*, 70 Fed. Rep. 277.) The omission of plaintiff to exercise his right to take default does not extend defendant's time for removal. (*Kansas City etc. Co. v. Daughtry*, 138 U. S. 298.) The removal acts do not contemplate that a party may experiment on his case in the State court, and upon an adverse decision transfer it to the federal courts. (*Rosenthal v. Coates*, 148 U. S. 142.) It is too late on appeal to raise the question that the cause was not removed in time. (*Knight v. Inter-*

national & G. Ry. Co., 23 U. S. App. 356; 61 Fed. Rep. 87; Newman v. Schwerin, 22 U. S. App. 393; 61 Fed. Rep. 865; Martin's Admrs. v. Baltimore & O. Ry. Co., 151 U. S. 673.) The limitation of time is waived if plaintiff fails to seasonably object. (Collins v. Stott, 76 Fed. Rep. 613.) The filing of an answer in the State court on the same day with the petition for removal is not a waiver of a right to remove. (Brisenden v. Chamberlain, 53 Fed. Rep. 307.) A motion by defendant for the dissolution of an injunction is not a plea or answer. (Garrard v. Silver Peak Mines, 76 Fed. Rep. 1.) It is not necessary in order to secure a removal that any pleading on behalf of defendant should first be filed, decisions of the State court to the contrary notwithstanding. (Egan v. Chicago M. & St. P. Ry. Co., 53 Fed. Rep. 675). The party who petitioned for the removal cannot object that the petition was filed too late; neither can a party who consented to the removal. (Connell v. Smiley, 156 U. S. 335.) The limitation in the statute to the time when defendant is required to plead refers to the time when he is required to make any defense whatever. (Martin's Admrs. v. Baltimore & O. Ry. Co., 151 U. S. 673; but see contra, Wilson v. Winchester & P. R. Co., 82 Fed. Rep. 15; Mahoney v. New South Building & Loan Assn., 70 Fed. Rep. 513.) On the admission of Utah, pending causes were removable, although the petition was not filed until after defendant was required to plead. (Fraser v. Trent, 74 Fed. Rep. 423; McCormick v. Western Union Tel. Co., 49 U. S. App. 116; 79 Fed. Rep. 449.) The federal court must decide for itself whether or not the petition for removal was filed in time, and all issues of fact upon the petition are only triable in that court. (Fidelity Trust & S. V. Co. v. Newport News & M. V. Co., 70 Fed. Rep. 403.) When a cause is remanded for defects in the petition,

after the time when an answer is required by the State practice, it is then too late to remove it on an amended petition. (*Frisbie v. Chesapeake & O. Ry. Co.*, 59 Fed. Rep. 369.)

Time to remove after plaintiff dismisses defendants improperly joined.—If plaintiff joins resident defendants, and, after the statutory time for removal has expired, dismisses such resident defendants, the nonresident defendant is entitled to remove, and plaintiff is estopped to set up the expiration of time therefor. (*Powers v. Chesapeake & O. Ry. Co.*, 169 U. S. 92; *Hukill v. Chesapeake & O. Ry. Co.*, 65 Fed. Rep. 138; *Powers v. Chesapeake & O. Ry. Co.*, 65 Fed. Rep. 129; *Pookerly v. Great Northern Ry. Co.*, 70 Fed. Rep. 277.) The provision that the petition may be filed at or before the time defendant is required to plead is model and formal, and does not operate to prevent a removal, where the cause does not become a removable one until after the time has expired. (*Speckart v. German Nat. Bank*, 85 Fed. Rep. 12; *Powers v. Chesapeake & O. Ry. Co.*, 169 U. S. 92.)

Subsequent extensions of time.—Under the act of 1888 an extension of time by the parties to plead beyond the time expressly provided by State statute or rule of the court does not extend the time for filing a petition for removal. (*Velie v. Manufacturer's & I. Co.*, 40 Fed. Rep. 545; *Dixon v. Western Union Tel. Co.*, 38 Fed. Rep. 377; *Price v. Lehigh Valley Ry. Co.*, 65 Fed. Rep. 825; *Schipper v. Consumer Cordage Co.*, 72 Fed. Rep. 803; *Fox v. Southern Ry. Co.*, 80 Fed. Rep. 945; contra, *People's Bank of G. v. Actua Ins. Co.*, 53 Fed. Rep. 161; *Allmark v. Platte S. S. Co.*, 76 Fed. Rep. 614; *Chiatovich v. Hanchett*, 78 Fed. Rep. 193.) An order of the State court extending the time to plead beyond the time fixed by the statute or rule of court does not operate to extend the time to file a

petition for removal, and this is so even though the order be made upon a stipulation of the parties extending the time to plead. (*Hurd v. Gere*, 38 Fed. Rep. 537; *Spangler v. Atchison etc. R. R. Co.*, 42 Fed. Rep. 305; *Ruby Canyon G. M. Co. v. Hunter*, 60 Fed. Rep. 305; *Rock Island Nat. Bank v. Keator Lumber Co.*, 52 Fed. Rep. 897; *Fox v. Southern Ry. Co.*, 80 Fed. Rep. 945; contra, *Wilcox & G. G. Co. v. Phoenix Ins. Co.*, 60 Fed. Rep. 929; *People's Bank of G. v. Aetna Ins. Co.*, 53 Fed. Rep. 161; *Allmark v. Platte S. S. Co.*, 76 Fed. Rep. 614.) The court has no power to extend the time after it has expired, even though defendant was prevented by inevitable accident from sooner filing the petition. (*Daugherty v. Western Union Tel. Co.*, 61 Fed. Rep. 138.)

Who may file record.—It is the duty of the removing party and not the clerk of the State court to transmit the record to the federal court. (*Hatcher's Admx. v. Wadley*, 84 Fed. Rep. 913.) After a party has filed his petition and bond in the State court the opposing party may file a copy of the record in the federal court before the expiration of the time limited for the removing party to do so. (*Consolidated Traction Co. v. Guarantors L. & I. Co.*, 78 Fed. Rep. 657; *Thompson v. Chicago St. P. & K. C. Ry. Co.*, 60 Fed. Rep. 773; *Delbanco v. Singletary*, 40 Fed. Rep. 177; *Mills v. Newell*, 41 Fed. Rep. 529.)

Appearance.—The petition must be filed at the time of entering an appearance. (*Yulee v. Vose*, 99 U. S. 539; *Kingsbury v. Kingsbury*, 3 Biss. 60; Fed. Cas. No. 7817; *Redmond v. Russell*, 12 Johns. 153; *Crane v. Reeder*, 28 Mich. 527; *Webre v. Duroc*, 15 La. An. 65; *Gibson v. Johnson*, Peters C. C. 44; Fed. Cas. No. 5397; *Davis v. Cook*, 9 Nev. 134; but see *Gelston v. Johnson*, 3 N. J. L. 625); and the appearance must first be entered in

the State court. (Ward v. Arredondo, 1 Paine, 410; Fed. Cas. No. 17148; Field v. Lownsdale, Deady, 288; Fed. Cas. No. 4769.) This requirement was intended not only to put the defendant to an election of his tribunal, but to give the opposite party early notice of his intention. (Redmond v. Russell, 12 Johns. 153.) If a suit is against a citizen of another State, the party must file his petition at the time he enters his appearance. (Sav. Bank of Cincinnati v. Benton, 2 Met. [Ky.] 240.) Defendants may apply at different times when their appearances are entered at different times. (Ward v. Arredondo, 1 Paine, 410; Fed. Cas. No. 17148.) Filing a demurrer in the State court or procuring an order dissolving an attachment is not a waiver of defendant's right to remove. (Whiteley & Malleable Castings Co. v. Sterlingworth Ry. Co., 83 Fed. Rep. 853.) The filing of a pleading or agreement by defendant, duly signed by his solicitor, and making an application thereon, is entering an appearance. (Pugsley v. Freedman's S. & T. Co., 2 Tenn. Ch. 130.) If petitioner enters into an agreement that the case shall remain on the docket, and thereby obtains a continuance, it shall be deemed an appearance. (Robinson v. Potter, 43 N. H. 188.) A landlord appears when he is admitted as a defendant. (Jackson v. Stiles, 4 Johns. 493.) If a plaintiff has taken no step to obtain a judgment by default, defendant may appear and file his petition for removal. (Carpenter v. N. Y. & N. H. R. Co., 11 How. Pr. 481.) A petition in general terms for the removal of a cause without specifying or restricting the purpose of defendant's appearance in the State court is not, like a general appearance, a waiver of any objection to the jurisdiction of the court over the person of defendant. (Wabash Western Ry. Co. v. Brow, 164 U. S. 271; National Accident Society v. Spiro, 164 U. S. 281; Kinne v. Lant, 68 Fed. Rep. 436; Golduey v. Morning

News, 156 U. S. 518; contra, Long v. Long, 73 Fed. Rep. 369; New York Construction Co. v. Simon, 53 Fed. Rep. 1); and an appearance for the special purpose of removing the cause is not a waiver of defects in the service or return of summons. (Hawkins v. Pierce, 79 Fed. Rep. 452; Baumgardner v. Bone Fertilizer Co., 58 Fed. Rep. 1; Hutton v. Joseph Bancroft & Sons Co., 77 Fed. Rep. 481; Morris v. Graham, 51 Fed. Rep. 53; McGillin v. Clafin, 52 Fed. Rep. 657; Garner v. Second Nat. Bank, 66 Fed. Rep. 369.) Appearance and entering bail are separate acts. (Suydam v. Smith, 1 Denio, 263; Redmond v. Russell, 12 Johns. 153.) So giving an undertaking with sureties on an arrest is not an appearance. (Durand v. Hollins, 3 Duer, 686; Arjo v. Monteiro, 1 Caines, 248; Bird v. Murray, Cole & C. Cas. 63; Dart v. Arnis, 19 How. Pr. 429; Hazard v. Durant, 9 R. I. 602.) If defendant opposes a motion for an injunction, and files an answer which is read at the hearing, he cannot remove the suit. (Livingston v. Gibbons, 4 Johns. Ch. 94; see Cooley v. Lawrence, 12 How. Pr. 176; Pugsley v. Freedman's S. & T. Co., 2 Tenn. Ch. 130). Or where he legally and properly assents to the jurisdiction. (Robinson v. Potter, 43 N. H. 188.) As where he appears and answers the original bill. (Richardson v. Packwood, 1 Martin N. S. 290.) A service of notice of appearance is not an appearance. (Chatham Nat. Bank v. Merchants' Nat. Bank, 1 Hun, 702.) Nor a mere agreement between the parties that defendant shall have further time to answer. (Disbrow v. Driggs, 8 Abb. Pr. 305, note.) If defendant obtains an order extending the time to answer, it is equivalent to an appearance. (Ayres v. Western R. Corp., 32 How. Pr. 351; S. C. 48 Barb. 132.) If the court appoints an attorney to represent an absent defendant, his appearance is not appearance by defendant. (Fisk v. Fisk, 4 Martin N. S. 676.) An appearance in

open court, at a special term held out of the district, is not an appearance entitling to a removal. (*Bristol v. Chapman*, 34 How. Pr. 140.) Where the defendants are served at different times, or at different times enter their appearance, they may each at such different times make application. (*Shelby v. Hoffman*, 7 Ohio St. 453; citing *Ward v. Arredondo*, 1 Paine, 410; Fed. Cas. No. 17148.) Where some of the defendants removed a cause regularly, others cannot enter an original appearance in such court. (*Ward v. Arredondo*, 1 Paine, 410; Fed. Cas. No. 17148.) Notice of appearance filed with the clerk at the time of application to remove is entering an appearance, but mere notice served on the plaintiff is not. (*Field v. Blair*, 1 Code Rep. (N. S.) 361.) The State court cannot cause an appearance to be entered *nunc pro tunc*, so as to entertain a motion for a new trial. (*Ward v. Arredondo*, 1 Paine, 410; Fed. Cas. Co. 17148; see *Gibson v. Johnson*, Peters C. C. 44; Fed. Cas. No. 5397.)

§ 109. **Bond and security.**—And shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such circuit court, on the first day of its then next session, a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suits, if special bail was originally requisite therein. (25 U. S. Stats. 433.)

See *Gier v. Gregg*, 4 McLean, 202; Fed. Cas. No. 5406; *McLeod v. Duncan*, 5 McLean, 342; Fed. Cas. No. 8898; *Screw Co. v. Bliven*, 3 Blatchf. 242;

Fed. Cas. No. 10156; *Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031.

Bond and security.—Under the judiciary act the defendant must give several or joint and several bonds, and not joint bonds (*Roberts v. Carrington*, 2 Hall, 694, *Hazard v. Durant*, 9 R. I. 602); but under the act of 1875 “good and sufficient surety” is all that is required. (Removal Cases, 100 U. S. 457; *Mix v. Andes Insurance Co.*, 74 N. Y. 53.) The act of 1867 only requires the offer of “good and sufficient surety,” the surety to bind himself in writing. The form is immaterial. (*Tunstall v. Madison*, 30 La. An. 471; *Mix v. Andes Ins. Co.*, 74 N. Y. 53.) So a stipulation in the nature of a recognizance is sufficient. (*Brown v. Crippin*, 4 Hen. & M. 173.) The penalty must be sufficient to indemnify for delay or failure to comply with its terms (*Miller v. Finn*, 1 Neb. 254); and a penalty of one thousand dollars will be deemed sufficient, if defendant has not been held to bail. (*Blanchard v. Dwight*, 12 Wend. 192). The removal bond should properly state a penal sum, yet its failure to do so is not material on a motion to remand. (*Johnson v. Austin Mfg. Co.*; 76 Fed. Rep. 616; *Kentucky v. Louisville Bridge Co.*, 42 Fed. Rep. 241.) Where the bond did not contain the conditions required by the act of 1875, and the penal sum was left blank in non-compliance with the act of 1867, the case was remanded. (*Burdick v. Hale*, 7 Biss. 96; Fed. Cas. No. 2147; see *Torrey v. Grant Works*, 14 Blatchf. 269; Fed. Cas. No. 14105.) The security must be offered at the time of filing the petition. (*Kirkpatrick v. Hopkins*, 2 Miles, 277; *Best v. N. Y. L. Ins. Co.*, 2 Cin. Rep. 329; *Robinson v. Potter*, 43 N. H. 188; *Hazard v. Durant*, 9 R. I. 602; *Weed Sew. Mach. Co. v. Smith*, 71 Ill. 204; contra, *Campbell v. Wallen*, 1 Mart. & Y. 266.) Under the judiciary act the securities must be offered

at the time of the party's appearance. (*Kirkpatrick v. Hopkins*, 2 Miles, 277.) The jurisdiction of the Federal court does not depend on the form or substance of the bond, if the statute in the other respects has been complied with (*Beebe v. Cheney*, 11 The Reporter, 360), and the petition need not contain an offer to give the security. (*Campbell v. Wallen*, 1 Mart. & Y. 166.) If the petitioner fails to file his bond, the case remains in the State court (*Hill v. Henderson*, 13 Sm. & M. 688), and the bond need not be filed till the security is accepted. (*Tunstall v. Madison*, 30 La. An. 471.) The petitioner need not execute the bond (*Brown v. Crippin*, 4 Hen. & M. 173; *Stevens v. Richardson*, 13 The Reporter 678; S. C. 9 Fed. Rep. 191; 20 Blatchf. 53); but the attorney of the petitioner may sign for him. (*Dennis v. Alachua*, 3 Woods, 683; Fed. Cas. No. 3791.) If, however, he does not sign, he must explain his reasons for not doing so. (*Weed Sew. Mach. Co. v. Smith*, 71 Ill. 204.) A bond executed by two responsible persons and the condition thereof fulfilled is sufficient though not signed by the party seeking removal. (*People's Bank v. Aetna Ins. Co.*, 53 Fed. Rep. 161; *Public Grain & Stock Exchange v. Western Union Tel. Co.*, 16 Fed. Rep. 289.) If the bond be signed by strangers only, and there is no proof of their solvency, there will be no error in refusing to transfer the cause. (*Weed Sew. Mach. Co. v. Smith*, 71 Ill. 204.) The State court may investigate the value of the sureties (*Orosco v. Gagliardo*, 22 Cal. 83; *Suydam v. Smith*, 1 Denio, 263), and judge of their sufficiency. (*Fitz v. Hayden*, 4 Martin N. S. 653.) It must determine whether the surety is "good and sufficient," may determine the amount, and whether it should be joint or joint and several (*Mix v. Andes Ins. Co.*, 74 N. Y. 53), and may require the sureties to justify. (*Weed Sew. Mach. Co. v. Smith*, 71 Ill. 204; *Darst v. Bates*,

51 Ill. 439; *Miller v. Finn*, 1 Neb. 254.) But the sureties on the bond are not bound to justify until a rule to do so is laid upon them. (*Empire Trans. Co. v. Richards*, 88 Ill. 404.) The absence of any acknowledgement or proof of the execution of the bond is a matter of practice for the State court to pass upon. (*Cooke v. Seligman*, 7 Fed. Rep. 263, 17 Blatchf. 452.) Where the bond presented is apparently ample, the State court cannot arbitrarily refuse to receive it, or refuse to remove without giving an opportunity to correct it, and make it ample. (*Taylor v. Shaw*, 54 N. Y. 75.) It cannot reject the security without assigning a cause (*Yulee v. Vose*, 94 U. S. 539; *Taylor v. Shaw*, 54 N. Y. 75; *Mix v. Andes Ins. Co.*, 74 N.Y. 53); nor can it refuse to accept it, except on the ground of insufficiency. (*Yulee v. Vose*, 99 U. S. 539; S. C., 64 N. Y. 449; *Fisk v. Union Pac. R. Co.*, 6 Blatch. 362, Fed. Cas. No. 4827; *Mix v. Andes Ins. Co.*, 74 N. Y. 53.) If all the requisites exist, the State court must accept the surety and proceed no farther. (*De Camp v. N. J. L. M. Ins. Co.*, 2 Sweeney, 481.) The surety is not bound by the subsequent adjudication against the principal in a State court. (*State v. Tiedermann*, 10 Fed. Rep. 20; 3 McCrary, 399.) An irregularity or defect in the form of the bond will be deemed waived after the expiration of eighteen months, where the cause was removed with the consent of all the parties. (*Hervey v. Illinois M. R. Co.*, 3 Fed. Rep. 707.) The bond is sufficient if conditioned that petitioners will comply with the statute, and although the obligors are not called sureties (*Stevens v. Richardson*, 9 Fed. Rep. 191; 20 Blatchf. 53); but it must provide for the appearance of petitioner at the next term of the court (*Miller v. Finn*, 1 Neb. 254); and that the surety will cause copies of the record to be entered is not sufficient. (*Clippinger v. Missouri Val. Ins. Co.*, 26 Ohio St. 404.) If the time prescribed in the bond within

which the transcript shall be filed has elapsed, the bond is insufficient (*Clippinger v. Missouri Val. Ins. Co.*, 26 Ohio St. 404); and if defendant is held to bail, the amount of the bond must equal the bail. (*Jones v. Seward*, 17 Abb. Pr. 377.) A clause in the condition of the bond providing that defendants shall cause to be done such other and appropriate acts as are required is sufficient compliance with the requirements of the statute. (*Cooke v. Seligman*, 7 Fed. Rep. 263; 17 Blatch. 452.) A defect in a bond may be cured by amendment with leave of court, or a new bond substituted in the Federal court (*Harris v. Delaware & L. W. R. Co.*, 18 Fed. Rep. 833; *Copburn v. Cedar Valley Land Co.*, 25 Fed. Rep. 791).

The sureties are liable for the costs accrued in the State court before removal as well as for the costs in the Federal court after removal (*Sawyer v. Williams*, 72 Fed. Rep. 296). A petition for removal is properly overruled where the undertaking is insufficient (*Combs v. Nelson*, 91 Ind. 123). The cause will be remanded where the bond contains no provision for costs (*Sheldrick v. Cockroft*, 27 Fed. Rep. 579).

The bond as well as the petition must be filed at or before the time of answering expires (*Austin v. Gagan*, 39 Fed. Rep. 626). It is a jurisdictional prerequisite to the removal of a cause (*Shedd v. Fuller*, 36 Fed. Rep. 609).

A Federal court will not, on motion to remand, enter upon inquiry as to the sufficiency of sureties on the bond (*Van Allen v. Atchison C. & P. R. Co.*, 3 Fed. Rep. 545); one competent surety is sufficient in removal cases (100 U. S. 457). "Bail" means an undertaking for the personal appearance of the party, and does not imply bond for the forthcoming of attached property. "Special bail" does not include delivery bonds executed to discharge property from attach-

ment. (*Ramsay v. Coolbaugh*, 13 Iowa, 164; see *Burck v. Taylor*, 39 Fed. Rep. 581.)

§ 110. State court to proceed no further in the suit.—It shall then be the duty of the State court to accept said petition and bond, and proceed no further in such suit, and the said copy being entered as aforesaid in the said circuit court of the United States, the cause shall then proceed in the same manner as if it had been originally commenced in the said circuit court. (18 U. S. Stats. 470; superseded by 25 U. S. Stats. 433.)

Order of removal.—No formal order for the removal of the cause is necessary (*La Page v. Day*, 74 Fed. Rep. 977; *Eisenmann v. Delemar's Nev. G. M. Co.*, 87 Fed. Rep. 248; *Lund v. Chic. R. I. & P. R. Co.*, 78 Fed. Rep. 385; *Wilson v. W. U. Tel. Co.*, 34 Fed. Rep. 561; *Osgood v. C. D. & V. R. Co.*, 6 Biss. 330, Fed. Cas. No. 10604; *Connor v. Scott*, 4 Dill. 242, Fed. Cas. No. 3119; *Lalor v. Dunning*, 56 How. Pr. 209; *Hatch v. Chic. R. I. & P. R. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204); though the better practice is to make an order (*Jackson v. Mut. L. Ins. Co.*, 60 Ga. 423; see *Vandervoort v. Palmer*, 4 Duer, 677; *Jones v. Seward*, 26 How. Pr. 433); yet it is removed though an order is not passed. (*Commercial Sav. Bank v. Corbett*, 5 Sawy. 172, Fed. Cas. No. 3057.) So no order accepting petition and bond is necessary. If the statute has been complied with the filing of the transcript vests jurisdiction in the federal court. (*Wilcox & G. Guano Co. v. Phoenix Ins. Co.*, 60 Fed. Rep. 929; *Shepherd v. Bradstreet*, 65 Fed. Rep. 142; *Monroe v. Williamson*, 81 Fed. Rep. 977; *Chattanooga R. & C. R. Co. v. Cincinnati N. O. & T. P. R. Co.*, 44 Fed. Rep. 456; *Kern v. Huldekoper*, 2 Morr. Trans. 597.) Neither an order refusing nor an order granting a re-

removal can affect the jurisdiction of the circuit court. (*Fisk v. Union P. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 4827; *Hatch v. Chic. R. I. & P. R. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204; *Lind v. Chic. R. I. & P. R. Co.* 78 Fed. Rep. 385; *People v. Judge*, 21 Mich. 577; *Carpenter v. N. Y. & N. H. R. Co.*, 11 How. Pr. 481; *Bell v. Dix*, 49 N. Y. 232; *Cooke v. State Nat. Bank*, 52 N. Y. 96.) When the proper steps are taken and the evidence is presented, the right is perfected, and no action of the State court can confer the right or take it away. (*Hatch v. Chic. R. I. & P. R. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204.) The State court may insert in the order a provision that it shall not operate of itself, to dismiss an injunction previously issued. (*Liddle v. Thatcher*, 12 How. Pr. 294.) If an order for removal is erroneously entered, the State court may strike it out (*Shepherd v. Young*, 1 T. B. Mon. 203); but it cannot subsequently vacate it on the ground that it was imprudently or inadvertently granted. (*Chamberlain v. Amer. N. L. & T. Co.*, 11 Hun. 370; *Cissel v. McDonald* 16 Blatchf. 150, Fed. Cas. No. 2729.) The order for removal cannot be renewed by a State court. (*St. Anthony's F. W. P. Co. v. King Bridge Co.*, 23 Minn. 186; *Ralph v. Claiborne*, 2 Mart. (La.) 176; *Knickerbocker L. Ins. Co. v. Gorbach*, 70 Pa. St. 150; *Chamberlain v. Am. L. Ins. Co.*, 11 Hun. 370.) It may be made after the appearance of the defendant (*Houser v. Clayton*, 3 Woods, 273, Fed. Cas. No. 6739); but if obtained without notice to the adverse party, he may appear and move to have it vacated. (*Lalor v. Dunning*, 56 How. Pr. 209.) An entry in the record of the circuit court of a finding that there is a right to remove on the ground of local prejudice does not affect a removal (*Tod v. Cleveland & M. V. Ry. Co.*, 22 U. S. App. 707; 65 Fed. Rep. 145.)

Jurisdiction, when attaches in circuit court.—The jurisdiction of the circuit court attaches as soon as it becomes the duty of the State court to proceed no farther. (*Railroad Co. v. Koontz*, 3 Morr. Trans. 34.) Where a sufficient case is made the jurisdiction of the State court is at an end, and the jurisdiction of the Federal court attaches. (*Clark v. Chicago, M. & St. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591; *Sweet v. Same*, 11 Fed. Rep. 355; 3 McCrary, 591; *Wilson v. Western U. Tel. Co.*, 34 Fed. Rep. 561; *State v. Coosaw Min. Co.*, 45 Fed. Rep. 804; *Torrent v. Martin L. Co.*, 37 Fed. Rep. 727.) When a case is clearly within the statute and the controversy one in relation to the priority of liens between citizens of different States, the circuit court has jurisdiction. (*Beery v. Irick*, 22 Gratt. 484.) The jurisdiction depends on the act under which the suit is removed; so restrictions on the jurisdiction in the eleventh section of the Judiciary Act have no application to removals under the twelfth section. (*Lexington v. Butler*, 14 Wall. 282; *Green v. Custard*, 23 How. 484; *Winans v. McKean etc. Nav. Co.*, 6 Blatchf. 215, Fed. Cas. No. 17862; *Bushnell v. Kennedy*, 9 Wall. 387; *Sands v. Smith*, 1 Dill. 290, Fed. Cas. No. 12305; *Sayles v. N. W. Ins. Co.*, 2 Curt. 212, Fed. Cas. No. 12421; *Barclay v. Levee Comm'rs*, 1 Woods. 254, Fed. Cas. No. 977; *Gaines v. Fuentes*, 92 U. S. 10.) If the statute authorizes a removal it empowers the circuit court to take the jurisdiction (*Bushnell v. Kennedy*, 9 Wall. 387; *Lexington v. Butler*, 14 Wall. 282; *Gaines v. Fuentes*, 92 U. S. 10; *Sands v. Smith*, 1 Abb. U. S. 368; S. C., 1 Dill. 290, Fed. Cas. No. 12305; *Bliven v. N. E. Screw Co.*, 3 Blatchf. 111, Fed. Cas. No. 1550; *Barney v. Globe Bk.*, 5 Blatchf. 107, Fed. Cas. No. 1031; *Winans v. McKean R. & N. Co.*, 6 Blatchf. 215, Fed. Cas. No. 17862; *Sayles v. Northwestern Ins. Co.*, 2 Curt. 212, Fed. Cas. No. 12421; but see *Beardsley v. Torrey*, 4

Wash. C. C. 286, Fed. Cas. No. 1190; *Colcord v. Wall*, 2 Miles, 459; *Denniston v. Potts*, 11 Smedes & M. 36; *Hadley v. Dunlap*, 10 Ohio St. 1; *Hazard v. Durant*, 9 R. I. 602; but it is not required to take jurisdiction until in some form the jurisdiction is made to appear of record (*American Bible Soc. v. Grove*, 101 U. S. 610); so there is no jurisdiction where no question is pending. (*Fasnacht v. Frank*, 23 Wall. 416.) Removal is an indirect mode by which the circuit court acquires original jurisdiction. (*Karns v. Atlantic & Ohio R. Co.*, 10 Fed. Rep. 309; *Bushnell v. Kennedy*, 9 Wall. 387; *Railroad Co. v. Whitton*, 13 Wall. 270; see *Ex parte Crane*, 5 Peters, 206.) Where the defendant has filed the proper application and bond, the jurisdiction of the circuit court will not be affected by his subsequent death, and the execution of an appeal bond by his executor. (*Garrett v. Bonner*, 30 La. An. 1305.) The jurisdiction of the Federal court does not depend upon the existence or regularity of an order for removal (*Lund v. Chicago R. I. & P. R. Co.*, 78 Fed. Rep. 385). The question of jurisdiction belongs to the Federal court, and must be determined there (*Dennistoun v. Draper*, 5 Blatchf. 338, Fed. Cas. No. 3804; *Taylor v. Rockefeller*, 7 Cent. L. J. 349, Fed. Cas. No. 13802; *Cobb v. Globe Mut. L. Ins. Co.*, 3 Hughes, 452, Fed. Cas. No. 2921); so inquiries into the facts of the petition cannot be made in the State court; it is a question exclusively for the Federal court. (*Fisk v. Union Pac. R. Co.*, 8 Blatchf. 243, Fed. Cas. No. 4828; *Stewart v. Mordecai*, 40 Ga. 1; *Chamberlain v. Amer. L. Ins. Co.*, 18 N. Y. Supr. 370.) Where a suit is legally removed the jurisdiction of the State court ceases, the case is at an end (*Clark v. Chicago, M. & St. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591; *Sweet v. Same*, 11 Fed. Rep. 355; 3 McCrary, 591); and it cannot be remanded for any purpose (*Kanouse v. Martin*, 15 How. 198; Insurance

Co. v. Dunn, 19 Wall. 214; Mahone v. Manchester etc. R. Co., 111 Mass. 72; and the question of jurisdiction is not waived where a State court asserts jurisdiction after a proper application for removal. (Gordon v. Longest, 16 Peters, 98; Kanouse v. Martin, 15 How. 198; Insurance Co. v. Dunn, 19 Wall. 214; New Orleans & R. Co. v. Mississippi, 102 U. S. 135; Removal Cases, 100 U. S. 475; Powers v. Chesapeake & Ohio Ry. Co., 169 U. S. 92; McMullen v. Northern Pac. Ry. Co., 57 Fed. Rep. 16; Ward v. San Diego Land & T. Co., 79 Fed. Rep. 665; Goodrich v. Hunton, 29 La. An. 372; Stevens v. Phoenix Ins. Co., 41 N. Y. 149; Hadley v. Dunlap, 10 Ohio St. 1; Erie R. Co. v. Stringer, 32 Ohio St. 468; Stanley v. Chicago, R. I. & P. R. Co., 3 Cent. L. J. 430.) If the case be within the act of Congress, and the petition in due form, accompanied by the required surety, the jurisdiction of the State court in the case ceases eo instanti (Removal Cases, 100 U. S. 457; Fisk v. Union Pac. R. Co., 6 Blatchf. 362, Fed. Cas. No. 4827; Hatch v. Chicago, R. I. & P. R. Co., 6 Blatchf. 105, Fed. Cas. No. 6204; Willis v. Baltimore & Ohio R. R. Co., 65 Fed. Rep. 532; Eisenmann v. Delemar's Nev. G. M. Co., 87 Fed. Rep. 248; Wilcox & G. Guano Co. v. Phoenix Ins. Co., 60 Fed. Rep. 929; Matthews v. Lyall, 6 McLean, 13; Taylor v. Rockefeller, 7 Cent. L. J. 298; Fulton v. Golden, 20 Alb. L. J. 229; Fed. Cas. No. 5155; Ficklin v. Tarver, 59 Ga. 263; Beery v. Chicago etc. R. Co., 64 Mo. 533; Blair v. West Point Manufacturing Co., 7 Neb. 146; St. Anthony's Falls W. P. Co. v. King Bridge Co., 23 Minn. 186; Shaft v. Phoenix Life Ins. Co., 67 N. Y. 544; Durham v. Southern L. Ins. Co., 46 Tex. 182; McMurdy v. Insurance Co., 4 Week. No. Cas. 18, Fed. Cas. No. 8903; and all its proceedings, after an erroneous denial of the petition for removal, are coram non iudice. (Herryford v. Etna Ins. Co., 42 Mo. 153; Akerly v. Vilas, 2 Biss. 110, Fed. Cas. No.

119; *Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827; 8 Blatchf. 249, Fed. Cas. No. 4828; *Stevens v. Phoenix Ins. Co.*, 41 N. Y. 149; see *Kanouse v. Martin*, 15 How. 198; *Gordon v. Longest*, 16 Peters, 97; *Insurance Co. v. Dunn*, 19 Wall. 214; *French v. Hay*, 22 Wall. 250; Removal Cases, 100 U. S. 457; *Du Vivier v. Hopkins*, 116 Mass. 126; *Bell v. Dix*, 49 N. Y. 232; *Amory v. Amory*, 36 N. Y. Supr. 524; *Hadley v. Dunlap*, 10 Ohio St. 8; *Stanley v. Chicago, R. I. & P. R. Co.*, 3 Cent. L. J. 430; *Rosenfield v. Adams Express Co.*, 21 La. An. 233.) The requirements of the act cannot be varied or added to by the laws of the State, or the practice of the State court (*Shaft v. Phoenix M. L. Ins. Co.*, 67 N. Y. 544), and it is not a valid objection to removal that process was not served in conformity to the laws of the United States. (*Sayles v. Northwestern Ins. Co.*, 2 Curt. 212, Fed. Cas. No. 12421.) Where defendant is served with process, and has answered, the court has personal jurisdiction over him, and a second service of process is not necessary. (*Ward v. Todd*, 2 Morr. Trans. 1.) That proof of publication of notice to defendant was not made prior to the order for removal will not prevent the Federal court from having jurisdiction (*Turner v. The I. B. & W. R. Co.*, 8 Biss. 380, Fed. Cas. No. 14259); and where defendant voluntarily appears and answers, the court acquires jurisdiction irrespective of the want of a replication. (*Turner v. The I. B. & W. R. Co.*, 8 Biss. 280, Fed. Cas. No. 14259.) The filing of the petition is not a waiver of the right to insist that service of process was procured by fraud. (*Moynahan v. Wilson*, 2 Flipp. 130, Fed. Cas. No. 9897.) Where the petition was reserved for the decision of the supreme court, and the latter dismissed the petition and remanded the cause, the circuit court has no jurisdiction. (*Kimball v. Evans*, 93 U. S. 320; see *Fasnacht v. Frank*, 23 Wall. 416.)

One who recovers a cause cannot claim that the court to which the cause was removed had no jurisdiction, unless the State court had no jurisdiction (*Cowley v. Northern Pac. Ry. Co.*, 159 U. S. 569; *Edwards v. Connecticut Life Ins. Co.*, 20 Fed. Rep. 452; *Tallman v. Baltimore & Ohio R. Co.*, 45 Fed. Rep. 156). The allegations of the petition for removal can be considered only so far as they are consistent with the record (*Rothschild v. Matthews*, 22 Fed. Rep. 6). The jurisdiction of a Federal court to which a cause has been removed, relates back to the time of the original service of process (*Owens v. Ohio Cent. R. R. Co.*, 20 Fed. Rep. 10). If the State court has no jurisdiction the Federal court to which the cause is removed has none (*Fidelity Trust Co. v. Gill Car Co.*, 25 Fed. Rep. 737). The proper way in which to raise the question of the jurisdiction of the circuit court in a removed case is by plea in abatement (*Clarkhuff v. Wisconsin, Iowa etc. Ry. Co.*, 26 Fed. Rep. 465).

Jurisdiction of Federal court after petition filed but before filing of record.—After the filing in the State court of a proper petition and bond for removal, and before the first day of the next term of the Federal court, the latter court has plenary jurisdiction over the case and may do with it anything that it could do with a case originally brought therein; but it cannot compel the parties to appear before the time fixed in the Federal court to proceed to final judgment or to the hearing of any application requiring a determination of the whole merits of a controversy (*Hamilton v. Fowler*, 83 Fed. Rep. 321; *Whelan v. New York etc. R. R. Co.*, 35 Fed. Rep. 849; *Kansas City & T. R. Co. v. Interstate Lumber Co.*, 36 Fed. Rep. 11; see, also, *New Orleans City Ry. Co. v. Crescent City Ry. Co.*, 5 Fed. Rep. 160); but if the jurisdiction of the court is doubtful it will not (*Wagner v. Drake*, 31 Fed. Rep. 849).

On due notice if any extraordinary procedure be necessary to preserve the property in controversy, or the rights of the litigants, either party may be required to appear for that purpose and either may file the record for a proper hearing of the application (*Hamilton v. Fowler*, 83 Fed. Rep. 321).

In a suit to enjoin the sale of property under a mortgage if the State court has granted a temporary stay of the sale and a defendant then removes the cause, the Federal court cannot hear a motion to dissolve the stay, before the first day of its ensuing term (*Hamilton v. Fowler*, 83 Fed. Rep. 321).

A plaintiff may be enjoined from pressing the trial of, a cause in the State court, where proper petition and bond has been filed for its removal to the Federal court, and the judgment rendered in such latter court (*Baltimore & Ohio R. R. Co. v. Ford*, 35 Fed. Rep. 170).

§ 111. Time to file record—Misfeasance of clerk—Certiorari.—That in all causes removable under this act, if the term of the circuit court to which the same is removable, then next to be holden, shall commence within twenty days after filing the petition and bond in the State court for its removal, then he or they who apply to remove the same shall have twenty days from such application to file said copy of record in said circuit court and enter appearance therein; and if done within said twenty days, such filing and appearance shall be taken to satisfy the said bond in that behalf; that if the clerk of the State court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same a copy of the record therein, after

tender of legal fees for such copy, said clerk so offending shall be deemed guilty of a misdemeanor, and, on conviction thereof in the circuit court of the United States, to which said action or proceeding was removed, shall be punished by imprisonment not more than one year, or by fine not exceeding \$1,000, or both, in the discretion of the court. And the circuit court to which any cause shall be removable under this act shall have power to issue a writ of certiorari to said State court, commanding said State court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this act for the removal of the same, and enforce said writ according to law; and if it shall be impossible for the parties or persons removing any cause under this act, or complying with its provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said State court refuses to furnish a copy on payment of legal fees, or for any other reason, the circuit court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said circuit court shall require the other party to plead, and said action or proceeding shall proceed to final judgment; and the said circuit

court may make an order requiring the parties thereto to plead *de novo*; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires a copy of the record to be filed as aforesaid. (Act of March 3, 1875, sec. 7; 18 U. S. Stats. 470; 1 Sup. Rev. Stats. 175. Rev. Stats. sec. 645 superseded.)

The record.—The record must show on its face that the cause is removable (Grand Trunk Ry. Co. v. Twitchell, 21 U. S. App. 453; 59 Fed. Rep. 727). The copy of the record must be duly certified (Martin v. Kanouse, 1 Blatchf. 149, Fed. Cas. No. 9162); and detached papers may be certified to, and may constitute the record if duly certified. (Commercial & Sav. Bk. v. Corbett, 5 Sawy. 172, Fed. Cas. No. 3057.) The cause is removed as of the date when the motion is made, and the papers should be certified as of that date (Clark v. Delaware etc. Canal Co., 11 R. I. 36); but it is not sufficient to enter merely a copy of the summons (McBratney v. Usher, 1 Dill. 367, Fed. Cas. No. 8661); "process" is equivalent to proceedings. (McBratney v. Usher, 1 Dill. 367, Fed. Cas. No. 8661.) It is necessary that the fact of alienage or citizenship should appear on the record of the original proceedings. (Grand Trunk Ry. Co. v. Twitchell, 21 U. S. App. 45; 59 Fed. Rep. 727.) Where a cause has been removed, and all the papers subsequently destroyed by fire, and the parties admit the cause was transferred in accordance with the statute, the court may presume that the requisite citizenship was shown (Railroad Company v. Ramsey, 22 Wall. 328); so the record may be amended by consent (Hodgson v. Bowerbank, 5 Cranch, 303; see Parker v. Overman, 18 How. 137); and where the record at the time of removal did disclose the fact, the transcript in the Federal court may be amended so

as to conform to the State record (*Kaeiser v. Ill. Central R. Co.*, 6 Fed. Rep. 1); but whether the record in the State court may be amended so as to conform to the statute after the term has passed, *quaere?* (*Kaeiser v. Illinois Cent. R. Co.*, 6 Fed. Rep. 1; 2 McCrary, 187.) An amendment to the transcript may be filed where the record does not disclose the requisite citizenship. (*Kaeiser v. Illinois Cent. R. Co.*, 6 Fed. Rep. 1; 2 McCrary, 187; but see *Grand Trunk Ry. Co. v. Twitchell*, 21 U. S. App. 45; 59 Fed. Rep. 727.) Failure to give notice of the filing of the record in the Federal court constitutes no ground for the remanding of a cause (*Chiatovich v. Hanchett*, 78 Fed. Rep. 193.) The record showing the amount in controversy cannot be contradicted by *ex parte* affidavits presented on motion to remand (*Smith v. Western Union Tel. Co.*, 79 Fed. Rep. 132). At least nominal damages may be recovered for failure to file the record in the Federal court as provided in the bond (*Henry v. Louisville & N. R. Co.*, 91 Ala. 585).

The facts on which the jurisdiction of the circuit court depends must in some way appear upon the record (*Continental L. Ins. Co. v. Rhoads*, 119 U. S. 237; *Austin v. Gagan*, 39 Fed. Rep. 626; *State of Iowa v. Chicago, etc. R. R. Co.*, 33 Fed. Rep. 39; *Gibbs v. Crandall*, 120 U. S. 105); and no amendments in the Federal court are admissible to cure material defects (*Freeman v. Butler*, 39 Fed. Rep. 1; *Fitzgerald v. Missouri Pac. Ry. Co.*, 45 Fed. Rep. 812). If jurisdictional facts appear upon the record they need not be set out in the petition (*National Steamship Co. v. Tugman*, 106 U. S. 118; *Terry v. Sharon*, 131 U. S. 40).

Time to file record.—The jurisdiction is not complete in the Federal court before the day prescribed by the statute, although a transcript has been filed (*Matt. of Barnesville & M. R. Co.*, 4 Fed. Rep. 10; 2 McCrary, 216); nor can the circuit court proceed un-

til copies of the proceedings are entered there. (*Fisk v. U. P. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 4827; *Clippinger v. Mo. Val. Ins. Co.*, 1 Flippin 456, Fed. Cas. No. 2901.) The Federal court is not to be deprived of jurisdiction if the transcript is filed at a later day in the term, but for good cause may permit it to be filed at such later day (*Lucker v. Phoenix Assur. Co.*, 66 Fed. Rep. 161; *Pierce v. Corrigan*, 77 Fed. Rep. 657; *Burgunder v. Browne*, 59 Fed. Rep. 497; *Hall v. Brooks*, 14 Fed. Rep. 113). The provision as to the filing of the transcript is mandatory only as a matter of practice, and the defect may be cured by allowing it to be filed nunc pro tunc. (*Woolridge v. McKenna*, 8 Fed. Rep. 650;) but the court will not permit such filing if the delay extends over several terms and is caused by inexcusable laches. (*Hatcher's Adm'x. v. Wadley*, 84 Fed. Rep. 913;) if the defendant allows the time to answer to expire before filing the record in the Federal court, that court must hold him in default for answer (*Wilcox & G. Guano Co. v. Phoenix Ins. Co.*, 60 Fed. Rep. 929); leave to file the record after the time fixed in the statute cannot be granted in the absence of a showing that it was impossible to file it at the required time (*Stoutenburgh v. Whar-ton*, 18 Fed. Rep. 1). It may be filed at any time within the period allowed by the State statute (*Rail-road Co. v. Koontz*, 3 Morr. Trans. 341; *King v. Worthington*, 3 Morr. Trans. 101), before the commencement of the next term after the removal (*Bowen v. Kendall*, 23 Law Reporter, 538, Fed. Cas. No. 1724); and it is sufficient, although a term devoted exclusively to criminal cases has intervened. (*Jones v. Oceanic St. N. Co.*, 11 Blatchf. 406, Fed. Cas. No. 7485.) The proper time for entering into the circuit court "copies of the papers," etc., is on the first day of the next session after the filing of the petition, etc., but in any event the moving party has twenty days

to file a copy of the record. (*Clippinger v. Mo. Val. Ins. Co.*, 1 Flippin 456, Fed. Cas. No. 2901.) The only necessary consequence of failure to file the record by the first day of the next term after application, or within twenty days thereafter, is to create a liability on the bond. (*Kidder v. Featteau*, 2 Fed. Rep. 616; 1 *McCrary*, 323.)

Duty of clerk as to removal.—It is the duty of the removing party and not of the clerk to file the record in the Federal court (*Hatcher's Adm'x. v. Wadley*, 84 Fed. Rep. 913). If a clerk refuses to furnish copies of the record and proceedings, this court will allow parties to supply them (*Akerly v. Vilas*, 2 Biss. 110, Fed. Cas. No. 119); and the petitioner may file a copy thereof in the circuit court. (*Akerly v. Vilas*, 2 Biss. 110, Fed. Cas. No. 119.) If he has done all that is necessary, he may perfect the removal by entering in the Federal court at the proper time copies of proper papers, and his appearance and special bail if necessary. (*Hatch v. Chicago, R. I. etc. Co.*, 6 Blatchf. 105, Fed. Cas. No. 6204.) The clerk of the State court has no right to withhold the transcript, although an appeal has been taken. (*Akerly v. Vilas*, 2 Biss. 110, Fed. Cas. No. 119.)

Certiorari in removal cases.—A removal is effected by certiorari from the Federal court, or by order of the State court. (*Nat. Union Bk. v. Dodge*, 11 The Reporter, 641.) The writ is often resorted to as a means of effecting, pursuant to law, the removal of the record from one court to another (*U. S. v. McKee*, 4 Dill. 1, Fed. Cas. No. 15687; *State v. Gibbons*, 4 N. J. Law, 44); so a defect or omission in the transcript may be cured by certiorari. (*Dennis v. Alachua Co.*, 3 Woods, 683, Fed. Cas. No. 3791; *Cook v. Whitney*, 3 Woods, 715, Fed. Cas. No. 3166.) As where a copy of the record is incomplete (*Commercial & Sav. Bank*

v. Corbett, 5 Sawy. 172, Fed. Cas. No. 3057; Dennis v. Alachua Co., 3 Woods, 683, Fed. Cas. No. 3791; Cook v. Whitney, 3 Woods, 715, Fed. Cas. No. 3166); but the writ is unnecessary when the record is already before the Federal court. (Scott v. Clinton & Springfield R. Co., 6 Biss. 529, Fed. Cas. No. 12527; Ex parte Wells, 3 Woods, 128, Fed. Cas. No. 17386.) The object of the writ is to require the State court to certify the copy of the record (Broadnax v. Eisner, 13 Blatchf. 366, Fed. Cas. No. 1909); and requires the clerk to certify to the same (Broadnax v. Eisner, 13 Blatchf. 366, Fed. Cas. No. 1909); and his authentication is sufficient without the certificate of the judge (Osgood v. Railroad Co., 6 Biss. 330, Fed. Cas. No. 10604); and the authentication may be on separate sheets of paper. (Commercial & Sav. Bank v. Corbett, 5 Sawy. 172, Fed. Cas. No. 3057.) The Federal court may issue a certiorari to the State court, to which a return that an appeal had been taken would be insufficient. (Ellerman v. New Orleans R. Co., 2 Woods, 120, Fed. Cas. No. 4382; Insurance Co. v. Morse, 20 Wall. 445; see Bell v. Dix, 49 N. Y. 232.) This section provides that this writ shall command the State court to make return of the record of the cause removed (U. S. v. McKee, 4 Dill. 1, Fed. Cas. No. 15687); and the mandate that the State court shall proceed no farther in the cause is obligatory, as well on appeal as in the court of original jurisdiction. (Holden v. Putnam F. Ins. Co., 46 N. Y. 1.) The enforcement of proceedings for removal may be by mandamus (Spraggins v. County Court, Cooke, 160, citing Ladd v. Tudor, 3 Wood. & M. 325, Fed. Cas. No. 7975; and see Ex parte Turner, 3 Wall. Jr. 258, Fed. Cas. No. 14245); but without express authority by statute, a Federal court cannot issue a writ of mandamus to the State court (Hough v. Western Trans. Co., 1 Biss. 425, Fed. Cas. No. 6724; see In re Cromie, 2 Biss.

160, Fed. Cas. No. 3405; *Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362, Fed. Cas. No. 4827; and no jurisdiction is conferred to issue a mandamus under the statute (*Amer. U. Tel. Co. v. Bell Telephone Co.*, 1 Fed. Rep. 698; 1 McCrary, 175); so the circuit court has no jurisdiction of a writ of certiorari to a State court for the removal of proceedings by the State against a railroad company under the statute of the State. (*State v. Chicago & A. R. Co.*, 6 Biss. 107, Fed. Cas. No. 7006.)

Effect of removal.—The removal transfers the res with the cause, as a necessary part of the proceedings (*Osgood v. Chicago, D. & V. R. Co.*, 6 Biss. 330, Fed. Cas. No. 10604; *Scott v. Clinton & S. R. Co.*, 6 Biss. 529, Fed. Cas. No. 12527; *Kern v. Huidekoper*, 2 Morr. Trans. 597); and the fact that a collateral issue with respect to the res has sprung up cannot destroy the right of removal. (*Osgood v. Chicago, D. & V. R. Co.*, 6 Biss. 330, Fed. Cas. No. 10604.) So if a receiver has been appointed in the State court, he may be compelled to account in the circuit court after hearing. (*Hinckley v. G. C. & S. R. Co.*, 12 Chic. L. N. 176.) The removal does not render a delivery bond imperative, nor change the obligations of the sureties (*Ramsay v. Coolbaugh*, 13 Iowa, 164); nor is the action of the State court stayed pending the decision of the Federal court as to the right of removal. (*Nat. Union Bank v. Dodge*, 11 The Reporter, 641.) It does not change the nature of the issue, or the judgment to be rendered. (*West v. Aurora City*, 6 Wall. 139; *Partridge v. Ins. Co.*, 15 Wall. 573; *DuVivier v. Hopkins*, 116 Mass. 128.) If the cause was at issue in the State court, no other pleadings are necessary in the circuit court (*Merch. & Manuf. Nat. Bank v. Wheeler*, 13 Blatchf. 218, Fed. Cas. No. 9439); and if a declaration has been filed, no new declaration is needed. (Bills

v. New Orleans, St. L. & C. R. Co., 13 Blatchf. 227, Fed. Cas. No. 1409; West v. Smith, 101 U. S. 263.) And if complainant amends his bill, the circuit court will not lose its jurisdiction, although the amended bill does not show the jurisdiction. (Briges v. Sperry, 95 U. S. 401.) The decision in an interpleader suit in a State court that no lien was obtained by a certain attachment levy is binding upon the Federal court to which the original attachment suit has been removed (Montgomery v. McDermott, 87 Fed. Rep. 374). If the State has denied a motion to set aside service of summons the defendant cannot renew such motion in the Federal court without permission (Allmark v. Platte S. S. Co., 76 Fed. Rep. 615; Bragdon v. Perkins Campbell Co., 82 Fed. Rep. 338).

Practice and procedure after removal.—The case comes into the circuit court in the same condition in which it was in the State court. (Wertheim v. Contin. R. & T. Co., 11 Fed. Rep. 689; Duncan v. Gegan, 101 U. S. 810.) So where defendant has lost by his inaction the right to object to defective summons in the State court, he cannot be permitted to plead it in the circuit court. (Wertheim v. Contin. R. & T. Co., 11 Fed. Rep. 689.) The cause is proceeded with as if brought by original process. (Shampeau v. Connecticut River L. Co., 37 Fed. Rep. 771.) On removal in law cases pure and simple no repleader is necessary (Merchants' etc. Nat. Bank v. Wheeler, 13 Blatchf. 218; Fed. Cas. No. 9439; Bills v. New Orleans etc. R. Co., 13 Blatchf. 227; Fed. Cas. No. 1409; Dart v. McKinney, 9 Blatchf. 359; Fed. Cas. No. 3583; see as to former practice, Martin v. Kanouse, 1 Blatchf. 149; Fed. Cas. No. 9162); but when the relief sought is both legal and equitable, plaintiff must replead in the Federal court. (La Mothe Mfg. Co. v. Nat. Tube Works, 15 Blatchf. 432; Fed. Cas. No. 8033.) So where a suit in a State court unites legal and equal-

table matters, a repleader is necessary to frame the pleadings anew, so as to make it distinctively a suit at law or one in equity, or to divide it into two suits, one at law and the other in equity (*Green v. Custard*, 23 How. 484; *Thompson v. Railroad Co.*, 6 Wall. 134; *Partridge v. Insurance Co.*, 15 Wall. 573; *Hurt v. Hollingsworth*, 100 U. S. 100; *Akerly v. Vilas*, 2 Biss. 110; *Fisk v. Union P. R. Co.*, 8 Blatchf. 299; Fed. Cas. No. 4829; *Dart v. McKinney*, 9 Blatchf. 359; Fed. Cas. No. 3583; *Sands v. Smith*, 1 Dill. 290; Fed. Cas. No. 12305; *In re Foley*, 76 Fed. Rep. 390); and the Federal court is competent to make all orders necessary to mold it into a legal or equitable case, or recast it into two cases, one at law and the other in equity. (*La Mothe Mfg. Co. v. Nat. Tube Works*, 15 Blatchf. 432; Fed. Cas. No. 8033; *Sands v. Smith*, 1 Dill. 290; Fed. Cas. No. 12305.) A law action must proceed as such, although brought in the name of the real party in interest, instead of the party holding the bare legal title. (*Thompson v. Railroad Co.*, 6 Wall. 134; *Weed Sew. Machine Co. v. Wicks*, 3 Dill. 261; Fed. Cas. No. 17348; *Bushnell v. Kennedy*, 9 Wall. 391; *Knapp v. Railroad Co.*, 20 Wall. 117; *Wood v. Davis*, 18 How. 467; see *Suydam v. Ewing*, 2 Blatchf. 359; Fed. Cas. No. 13655.) Where an action praying for legal and equitable relief was removed to the Federal court and docketed on the law side, the Federal court should treat the cause as one at law and should have treated the allegations and prayer for equitable relief as surplusage. (*Blalock v. Equitable Life Ins. Co.*, 41 U. S. App. 761; 75 Fed. Rep. 43.) If the State practice permits equitable defenses to be set up by answer as effectually as by cross-bill, the Federal court in a removed cause will not require such an answer to be reframed upon removal. (*City of Detroit v. Detroit City Ry. Co.*, 55 Fed. Rep. 570.) The practice after removal is to be the same as if the

cause had originally been brought in the Federal court (*Suydam v. Ewing*, 2 Blatchf. 359; Fed. Cas. No. 13655; *Akerly v. Vilas*, 2 Biss. 110; Fed. Cas. No. 119), including the allowance of amendments which may be made in furtherance of justice, and within the scope of the original cause of action. (*Toucey v. Bowen*, 1 Biss. 81; Fed. Cas. No. 14107; *Suydam v. Ewing*, 2 Blatchf. 359; Fed. Cas. No. 13655; *Barclay v. Levee Commrs.*, 1 Woods, 254; Fed. Cas. No. 977; *Dart v. McKinney*, 9 Blatchf. 359; Fed. Cas. No. 3583; *Houser v. Clayton*, 3 Woods, 273; Fed. Cas. No. 6739; see *Parker v. Overman*, 18 How. 137.) The petition may be amended either by curing defective averments, or by substituting additional or new allegations (*Woolridge v. McKenna*, 8 Fed. Rep. 650); and where by mistake the plaintiff described himself in the original petition as a citizen of the State where suit was brought, he will be allowed to amend and state his true citizenship. (*Barclay v. Levee Commrs.*, 1 Woods, 254; Fed. Cas. No. 977; *Houser v. Clayton*, 3 Woods, 273; Fed. Cas. No. 6739; and see record amended by consent: *Parker v. Overman*, 18 How. 137.) The equity practice and procedure of the Federal courts is regulated by the rules promulgated by the supreme court of the United States. (*Martindale v. Waas*, 11 Fed. Rep. 551; 3 McCrary, 637.) State laws will be enforced after the removal of the cause (*Taylor v. Ypsilanti*, 4 Morr. Trans. 326; *Ouachita Co. v. Wolcott*, 2 Morr. Trans. 548; S. C., 11 Fed. Rep. 623; *Soustiby v. Keeley*, 11 Fed. Rep. 578, and note); so State laws as a rule of property will be followed. (*Burt v. Keyes*, 1 Flippin, 61; Fed. Cas. No. 2212; see *Talcott v. Pine Grove*, 1 Flippin, 120; Fed. Cas. No. 13735; *King v. Worthington*, 3 Morr. Trans. 101; *Potter v. Nat. Bank*, 102 U. S. 163; *Railroad Co. v. Koontz*, 3 Morr. Trans. 34.) Defendant does not lose his standing in the circuit court by unsuccessfully in-

sisting that it is yet in the State court. (Rowell v. Hill, 28 Fed. Rep. 433.) All rulings made and opinions expressed in the highest court of the State are treated precisely as if they had been made in the Federal court. (Cleaver v. Traders' Union Ins. Co., 40 Fed. Rep. 711.) That witnesses were held incompetent under the State law, does not preclude them from testifying in the United States court. (King v. Worthington, 104 U. S. 44.) The time for taking forward steps in the pleadings in a case removed to the circuit court of the United States is suspended until the time fixed when the record must be entered. (Torrent v. Martin Lumber Co., 37 Fed. Rep. 727; Pelzer Mfg. Co. v. St. Paul F. & M. Ins. Co., 40 Fed. Rep. 185.) The procedure in the circuit court is as of original cognizance (Wertheim v. Continental R. & T. Co., 11 Fed. Rep. 690; Karns v. Atlantic & O. R. Co., 10 Fed. Rep. 309), and as in all cases originally brought therein. (Bills v. N. O. St. L. etc. R. Co., 13 Blatchf. 227; Fed. Cas. No. 1409; see Howe S. M. Co. v. Edwards, 15 Blatchf. 403; Fed. Cas. No. 6784; Kelly v. Virginia P. Ins. Co., 3 Hughes, 449; Fed. Cas. No. 7677.) The jurisdiction of the circuit court is in no sense appellate (Bushnell v. Kennedy, 9 Wall. 387), and questions passed upon in the State court cannot be reviewed. (Brooks v. Farwell, 4 Fed. Rep. 166; 2 McCrary, 220.) It will not review the orders and rulings made by the State court. (Smith v. Schwed, 11 The Reporter, 730.) If the State court refused to set aside a summons when the party is exempt from service, the decision on a plea in abatement cannot be reviewed or reversed. (Brooks v. Farwell, 4 Fed. Rep. 166; 2 McCrary, 220.) The res is transferred with the case (Osgood v. Chicago etc. R. Co., 6 Biss. 330; Fed. Cas. No. 10604); but funds in the hands of a sheriff are no part of the subject-matter, and the court has no control over them (Smith v.

Schwed, 9 Fed. Rep. 483); but it may require, after removal, the receiver appointed by the State court to account for funds in his hands, and make him chargeable with interest. (*Hinckley v. Railroad Co.*, 100 U. S. 153.) Property in custody in a replevin suit should be sold, and the proceeds brought into court. (*Dennistoun v. Draper*, 5 Blatchf. 336; Fed. Cas. No. 3804.) The suit brings along with it as an incident all the costs which accrued or attached under the State law. The acts of Congress apply only to subsequent costs. (*Warren v. Ives*, 1 Flippin, 356; Fed. Cas. No. 17197; *Scripps v. Campbell*, 3 Cent. L. J. 521; Fed. Cas. No. 12562; contra, *Coggill v. Lawrence*, 2 Blatchf. 304; Fed. Cas. No. 2957.) If the petitioner has complied with the requirements of the act, he may, by answer, raise the question of loss of jurisdiction by reason of the proceedings for removal (*Shaft v. Phoenix M. L. Ins. Co.*, 67 N. Y. 544; *De Camp v. N. J. M. L. Ins. Co.*, 2 Sweeney, 481); and it is not necessary for him to plead the proceedings to the jurisdiction. (*Kanouse v. Martin*, 15 How. 198.) So a nonresident filing a petition and bond for removal is not a waiver of his right to object to the service on him while attending as a witness in another State. (*Atchison v. Morris*, 11 Fed. Rep. 582; 11 Biss. 191.)

Authority of court.—Proceedings had in the State court are not vacated by the removal. (*Harrison Wire Co. v. Wheeler*, 11 Fed. Rep. 206; *Kern v. Huidekoper*, 2 Morr. Trans. 617; *Diggs v. Wolcott*, 4 Cranch, 179.) The removal takes the case in the condition in which it was when the State court was deprived of its jurisdiction (*Bell v. Dix*, 49 N. Y. 232; *Fisk v. Union Pac. R. Co.*, 6 Blatchf. 362; Fed. Cas. No. 4827); and where an action commenced in a State court in which the distinction between legal and equitable procedure is done away with is removed, it

is removed to that side of the court where appropriate relief can be obtained. (*Commercial & Sav. Bank v. Corbett*, 5 Sawy. 172; *Fed. Cas. No. 3057*; following *Mahoney Min. Co. v. Bennett*, 4 Sawy. 289; *Fed. Cas. No. 8968*.) And for the purpose of jurisdiction, the circuit court has power to ascertain the real matter in dispute, and arrange the parties on one side or the other. (*French v. Hay*, 22 Wall. 250.) The circuit court has no jurisdiction to enjoin the proceedings of a State court. (*People v. Detroit Sup. Ct. Judge*, 41 Mich. 31.) Nor can it stay proceedings in the State court (*French v. Hay*, 22 Wall. 250); but it has jurisdiction to grant a provisional remedy before the first day of the next term on which a party must enter a copy of his record (*In re Barnesville & Moorehead R. Co.*, 4 Fed. Rep. 10; 2 McCrary, 216); and it may protect a party by injunction against a judgment in the State court, rendered after a proper application for removal (*N. O. City R. Co. v. Crescent City R. Co.*, 5 Fed. Rep. 160); but *ex parte* orders to restrain proceedings will be issued only where there is danger from irreparable injury from delay. (*Duncan v. Gegan*, 101 U. S. 810.) The federal courts may protect a party by injunction after a proper application to remove has been made. (*Smith v. Schwed*, 11 The Reporter, 730; *Duncan v. Gegan*, 101 U. S. 810.) So the right of intervenors to an injunction follows as a matter of course. (*Benedict v. Williams*, 10 Fed. Rep. 208; 20 Blatchf. 276.) An application to dissolve an injunction cannot be heard before the return day, when it involves the consideration of the case as an entirety, and the dissolution could not be granted without changing the status of the parties. (*Pacific R. Co. v. Ketchum*, 101 U. S. 298.)

§ 112. Process, not affected by removal.—That when any suit shall be removed from a State court

to a circuit court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the State court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which such suit was commenced; and all bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual, notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed. (Act of March 3, 1875, sec. 4; 18 U. S. Stats. 470; 1 Sup. Rev. Stats. 175. Rev. Stats. sec. 646 superseded.)

Process not affected by removal—generally.—The object of this section is to secure in each State one method of procedure in all common-law cases and to adopt the procedure of the State courts. (Bills v. St. Lawrence & C. R. Co., 13 Blatchf. 227; Fed. Cas. No. 1409.) The statutes of 1833, 1863, and 1868 are statutes where the right of removal depends on the subject matter of the suit (Fisk v. Union Pac. R. Co., 6 Blatchf. 362; Fed. Cas. No. 4827), and under all three acts the whole suit must be removed. (Fisk v. Union Pac. R. Co., 6 Blatchf. 362; Fed. Cas. No. 4827.) The jurisdiction of the circuit court under the act of 1863 is not taken away by the act of 1867 (Lamar v. Dana, 10 Blatchf. 34; Fed. Cas. No. 8005); but so much of this section as provides for the removal of a judgment where the cause was tried by a jury is in con-

flict with the seventh amendment to the constitution, and is void. (*Justices v. Murray*, 9 Wall. 274.) Orders made in the State court, but not complied with, should be recognized and enforced after removal, unless set aside or modified in the federal court. (*Williams Mow. & R. Co. v. Raynor*, 7 Biss. 245; Fed. Cas. No. 17748.) Original process includes any process issuing out of the State court. (*Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031.) This section is not affected by the provisions of Revised Statutes, section seven hundred and twenty. (*Perry v. Sharpe*, 8 Fed. Rep. 24.)

Original process.—The intention of this section is to clothe the circuit court with the powers of the State court in administering remedies (*Garden City Manuf. Co. v. Smith*, 1 Dill. 305; Fed. Cas. No. 5217); and if an attachment prevail over an assignment under the State law, it will have the same effect in the circuit court (*Clarke v. F. C. & M. Ins. Co.*, 21 Law Reporter, 394); and if an injunction has been granted, it remains in force until modified or dissolved by the circuit court. (*Northwestern D. Co. v. Corse*, 4 Biss. 514; Fed. Cas. No. 10325; *McLeod v. Duncan*, 5 McLean, 342; Fed. Cas. No. 8898; *Peters v. Peters*, 41 Ga. 242; see *Hatch v. Chicago R. I. & P. R. Co.*, 6 Blatchf. 105; Fed. Cas. No. 6204.) "Original process" includes mesne process issuing out of the State court; so an attachment, though issued after summons, is preserved. (*Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031; but see *New England Screw Co. v. Bliven*, 3 Blatchf. 240; Fed. Cas. No. 10156.) So a motion to dissolve an attachment may be made after removal to the circuit court. (*Garden City Manuf. Co. v. Smith*, 1 Dill. 305; Fed. Cas. No. 5217.) It is the intention of the law to authorize and require that the question of dissolving, continuing, or perpetuat-

ing an injunction shall be dealt with by the courts of the United States. (Perry v. Sharpe, 8 Fed. Rep. 24; see *In re County Judge of Virginia*, 3 Hughes, 576; Fed. Cas. No. 18259.)

Attachments.—The circuit court becomes clothed with the powers of the State court under this section. (*Garden City Manuf. Co. v. Smith*, 1 Dill. 305; Fed. Cas. No. 5217.) And attachments hold the property after removal (*New England Screw Co. v. Bliven*, 3 Blatchf. 240; Fed. Cas. No. 10156; see under Judiciary Act, *Barney v. Globe Bank*, 5 Blatchf. 107; Fed. Cas. No. 1031); even though there is no personal service of process (*Purdy v. Wallace, Mueller & Co.*, 81 Fed. Rep. 513), and if the party had made application for an attachment, he may proceed to get an attachment after removal. (*Bills v. N. O. St. L. & C. R. Co.*, 13 Blatchf. 227; Fed. Cas. No. 1409.) If an action by attachment against a nonresident is removed, the circuit court may proceed in the cause (*U. S. v. Ottman*, 1 Hughes, 313; Fed. Cas. No. 15977); and if it takes precedence over an assignment under the State law the circuit court may enforce it (*Clarke v. F. C. & M. Ins. Co.*, 21 Law Reporter, 394); but if it be a separate process, it will not carry with it a lien on the property in case of removal. (*New England Screw Co. v. Bliven*, 3 Blatchf. 240; Fed. Cas. No. 10156.) A motion to dissolve an attachment when authorized by the State law may be made in the circuit court, and if denied may be renewed at the discretion of the court (*Garden City Manuf. Co. v. Smith*, 1 Dill. 305; Fed. Cas. No. 5217); such motion may be made after removal if authorized under State laws and practice. (*Garden City Manuf. Co. v. Smith*, 1 Dill. 305; Fed. Cas. No. 5217.) A nonresident defendant does not submit to the exclusive jurisdiction of the State court by giving bond to release an attachment levied without personal service

(Purdy v. Wallace, Mueller & Co., 81 Fed. Rep. 513); where attachment suits are removed the rule of distribution and priority of liens will be the same as it would in a State court (Bankers' M. & T. Co. v. Chicago C. Co., 28 Fed. Rep. 398.)

Injunction.—An injunction issued by a State court remains in force till modified or dissolved by the circuit court; and it may maintain, continue, modify, or dissolve the injunction issued by the State court. (Watson v. Boudurant, 2 Woods, 166; Fed. Cas. No. 17278; Smith v. Schwed, 6 Fed. Rep. 455; 2 McCrary, 441.) Upon the modification of an injunction it may require, as a condition, that defendant give a bond to secure plaintiff against any injury which may result, or to perform the final decree concerning the same. (City of Portland v. Oregon Railway Co., 7 Sawy. 112.) Upon removal an injunction will not be dissolved upon the ground that the bill filed was not verified according to law and practice of the courts of chancery. (Smith v. Schwed, 6 Fed. Rep. 455; 2 McCrary, 441.) An application to dissolve an injunction could not be considered before the return day, where it involved the case as an entirety, or where it would change the status of the parties. (New Orleans City R. Co. v. Crescent City R. Co., 5 Fed. Rep. 160.) Under the act of 1866 an injunction issued by the State court was ipso facto dissolved by the removal, as no mention is made of injunctions in said act. (McLeod v. Duncan, 5 McLean, 342; Fed. Cas. No. 8898; Hatch v. Chicago R. I. & P. R. Co., 6 Blatchf. 105; Fed. Cas. No. 6204.)

§ 113. **Remand or dismissal of cause.**—That if, in any suit commenced in a circuit court, or removed from a State court to a circuit court of the United States, it shall appear to the satisfaction of

said circuit court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no farther therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just. (Act of March 3, 1875, sec. 5; 18 U. S. Stats. 470; 1 Sup. Rev. Stats. 175; 25 U. S. Stats. 433, sec. 6.)

Remanding Cause—Generally.—(See *Ayres v. Wiswall*, 112 U. S. 187; *Collins v. Wellington*, 31 Fed. Rep. 244; *Rumsey v. Call*, 28 Fed. Rep. 769; *Carson v. Dunham*, 121 U. S. 421; *Lazensky v. Supreme Lodge K. of H.*, 32 Fed. Rep. 417; *Anderson v. Appleton*, 32 Fed. Rep. 85; *Perry v. Clift*, 32 Fed. Rep. 801; *Manley v. Olney*, 32 Fed. Rep. 708.) On motion to remand, the court will not inquire into the truth of the allegations or sufficiency of the pleadings, but will leave such matters to the trial of the case. (*Hax v. Caspar*, 31 Fed. Rep. 499.) A cause may be remanded prior to the beginning of the term at which the removing defendants are required to file the transcript in the federal court when the party moving to remand gives proper notice and himself files the transcript (*Thompson v. Chicago, St. P. & K. C. Ry. Co.*, 60 Fed. Rep. 773). A foreclosure suit abates by death of the owner of the equity of redemption, and will not be remanded until the representative of the

legal title is brought in as defendant (*Wright v. Phipps*, 58 Fed. Rep. 552). Where the first step in a federal court was to dismiss the removing party, leaving the cause between parties who had not invoked the federal jurisdiction, the cause should be remanded without any action whatever (*California Safe Deposit & T. Co. v. Cheney El. Light Co.*, 56 Fed. Rep. 257; see, also, *Bane v. Keefer*, 66 Fed. Rep. 610).

Order of remand not appealable.—Since the act of March 3, 1887, took effect, the supreme court has no power to review on appeal or in error in a direct proceeding for that purpose an order of a circuit court remanding a cause to a State court (*Morey v. Lockhart*, 123 U. S. 56; *Missouri Pac. Ry. Co. v. Fitzgerald*, 160 U. S. 556; *Powers v. Chesapeake & Ohio Ry. Co.*, 169 U. S. 92; *Guernee v. Patrick Co.*, 137 U. S. 141; *Whelan v. New York R. Co.*, 35 Fed. Rep. 849); and this is so, whether the suit was begun and the removal had before or after said act took effect. (*Wilkinson v. Nebraska*, 123 U. S. 286; *Sherman v. Grinnell*, 123 U. S. 679.) But the refusal of the circuit court to remand a cause is appealable if the motion to remand was made promptly (*Martin's Admrs. v. Baltimore & O. R. R. Co.*, 151 U. S. 673; *Missouri Pac. Ry. Co. v. Fitzgerald*, 160 U. S. 556; *Cates v. Allen*, 149 U. S. 451). The supreme court will review after final judgment a ruling of the State court retaining a cause where application for removal was made (*Missouri Pac. Ry. Co. v. Fitzgerald*, 160 U. S. 556). It is the duty of the appellate court in considering a case which has been removed to examine the record to see if the cause was rightfully removed even if there was a motion to remand. (*Barth v. Coler*, 19 U. S. App. 646; 60 Fed. Rep. 466.)

Remanding cause—Want of jurisdiction.—The court will, without formal motion, take notice of a jurisdictional matter which is ground to remand the cause (*Beede v. Cheeney*, 5 Fed. Rep. 388; *State of Indiana v. Tolleston Club*, 53 Fed. Rep. 18; *In re Foley*, 76 Fed. Rep. 390; *Cates v. Allen*, 149 U. S. 451); and consent of parties cannot confer jurisdiction (*In re Foley*, 76 Fed. Rep. 390). So, if the petition and affidavit fail to bring the case within the statute, it is the duty of the circuit court to remand it. (*Dennistoun v. Draper*, 5 Blatchf. 336; Fed. Cas. No. 3804.) If the case does not substantially involve a controversy within the jurisdiction of the court, it will be the duty of the court to remand it (*Stevens v. Richardson*, 13 The Reporter, 678; *Railroad Co. v. Mississippi*, 102 U. S. 135; *Ryan v. Young*, 9 Biss. 63; Fed. Cas. No. 12188; *Fitzgerald v. Missouri P. R. Co.*, 45 Fed. Rep. 812); where the jurisdiction is not clear as to whether a party is a necessary or formal party, and there is no controversy wholly between citizens of different States which can be fully determined, the cause will be remanded. (*Evans v. Faxon*, 10 Fed. Rep. 312; 11 Biss. 175; *Calif. Safe Dep. & Tr. Co. v. Cheney El. Light Co.*, 56 Fed. Rep. 257.) Where a cause is remanded to the federal court and the party removing it is then dismissed and the controversy ceases to be within the federal jurisdiction a motion to remand should be granted. (*Bane v. Keefer*, 66 Fed. Rep. 610; *Texas Trans. Co. v. Seeligson*, 122 U. S. 519.) If the case is not one of federal cognizance it may be dismissed or remanded at any stage of the proceedings. (*Dennistoun v. Draper*, 5 Blatchf. 336; Fed. Cas. No. 3804; *Pollard v. Dwight*, 4 Cranch, 421; *Wood v. Matthews*, 2 Blatchf. 370; Fed. Cas. 17955; *Murray v. Patrie*, 5 Blatchf. 343; Fed. Cas. No. 9967.) The federal court cannot proceed unless it has jurisdiction,

whatever the condition of the parties may be (*McMurdy v. Conn. G. C. Ins. Co.*, 9 Chic. L. N. 324; *Fed. Cas. No. 8903*; *Young v. Andes Ins. Co.*, 1 Flipp. 599; *Fed. Cas. No. 18151*), and it must determine for itself the question of jurisdiction (*Field v. Lownsdale. Deady*, 288; *Fed. Cas. No. 4769*); where the jurisdictional facts are contested, the circuit court will not determine them on a motion to remand the cause. (*Dennistoun v. Draper*, 5 Blatchf. 336; *Fed. Cas. No. 3804*; *Hodson v. Milward*, 3 Grant, 418.) The cause will be remanded where the proceeding is under a local statute, and could not be litigated in a United States court. (*Lehigh Co. v. Central R. Co.*, 4 Week. Notes, 187; *Fed. Cas. No. 8213*.) The objection to the want of jurisdiction appearing on the face of the record, must be taken by motion to remand. (*Hoyt v. Wright*, 4 Fed. Rep. 168; 2 *McCrary*, 222.) A cause will be remanded where the petition for removal avers that one party, a corporation, is a "citizen" of a certain State instead of alleging that it is organized under the laws of that State. (*Frisbie v. Chesapeake & O. Ry. Co.*, 57 Fed. Rep. 1.) The record, including the petition, must show jurisdiction in the circuit court, and any omission (*Trafton v. Nougues*, 4 Sawy. 178; *Fed. Cas. No. 14134*; *Gold W. & W. Co. v. Keyes*, 96 U. S. 199), not afterward supplied is cause for remand; but if the proceedings are so amended as to remove all objections, the cause will not be remanded. (*Edgerton v. Gilpin*, 3 Woods, 277; *Fed. Cas. No. 4280*.) In an action properly removed on the ground of prejudice counter affidavits denying prejudice cannot be received on motion to remand unless it is shown that the court was misled in granting the order of removal. (*Reeves v. Corning*, 51 Fed. Rep. 774.) That a suit may be removed to, although it could not be originally brought in, the federal court, is not affected by the provisions

for the dismissal or remanding of suits not really and substantially involving a dispute or controversy with the jurisdiction of the circuit court. (Warner v. Pennsylvania R. Co., 13 Blatchf. 231; Fed. Cas. No. 17186.) The cause cannot be remanded on the ground that it is not susceptible of decision after complainant files a new bill in the circuit court. (Carrington v. Florida R. Co., 9 Blatchf. 467; Fed. Cas. No. 2447; see Ayres v. Wiswall, 112 U. S. 187; Collins v. Wellington, 31 Fed. Rep. 244; Rumsey v. Call, 28 Fed. Rep. 769; Carson v. Dunham, 121 U. S. 421; Lazensky v. Supreme Lodge K. of H., 32 Fed. Rep. 417; Anderson v. Appleton, 32 Fed. Rep. 855; Perry v. Clift, 32 Fed. Rep. 801; Manley v. Olney, 32 Fed. Rep. 708.) On motion to remand, the court will not inquire into the truth of the allegations or sufficiency of the pleadings, but will leave such matters to the trial of the case. (Hax v. Caspar, 31 Fed. Rep. 499.) A suit which is removed will be remanded rather than dismissed if brought as an equitable action when a remedy at law exists (Gombert v. Lyon, 80 Fed. Rep. 305). A State court may, in its discretion stay proceedings until defendant's costs are paid where the supreme court has remanded the cause to the State court with directions to proceed no further because the cause had been removed to the circuit court (National Steamship Co. v. Tugman, 143 U. S. 28). But a judgment in the State court in favor of appellants for costs rendered by the State court after the order of the supreme court is a nullity (National S. S. Co. v. Tugman, 51 U. S. App. 496; 82 Fed. Rep. 246). If a suit is improperly removed by a defendant the latter must on remand pay the costs in the latter court and the costs of appeal to supreme court (Hanrick v. Hanrick, 153 U. S. 192; Cates v. Allen, 149 U. S. 451; Postal Tel. Co. v. State of Alabama, 155 U. S. 482; Neel v. Pennsyl-

vania Co., 157 U. S. 153; Mattingly v. Northwestern Va. Ry. Co., 158 U. S. 53; but see Torrence v. Shedd, 144 U. S. 527). An attorney's docket fee is not included (Smith v. Western Union Tel. Co., 81 Fed. Rep. 242). That costs may be set off against amount of recovery (National S. S. Co. v. Tugman, 82 Fed. Rep. 247). Where the amount in controversy does not exceed \$2,000, exclusive of interest and costs, the circuit court has no jurisdiction and the cause should be remanded (Lazensky v. Supreme Lodge K. of H., 32 Fed. Rep. 417). A motion based upon a denial of the adverse citizenship of the parties raises an issue upon that question which requires adjudication (Curnow v. Phoenix Ins. Co., 44 Fed. Rep. 305).

Motion to remand.—A motion to remand will not be entertained, unless from unavoidable necessity, to ascertain the appropriate tribunal to hear and determine the case (Dennistoun v. Draper, 5 Blatchf. 336; Fed. Cas. No. 3804); and the question of the right to remove cannot be raised on motion before trial, but at the trial it may. (Dennistoun v. Draper, 5 Blatchf. 336; Fed. Cas. No. 3804.) A plaintiff may move to dismiss, although two terms have elapsed since the filing of the transcript, if he has not appeared and pleaded. (Brice v. Somers, 8 Chic. L. N. 290; Fed. Cas. No. 1853.) The party who alleges that the removal has been improperly made must make such fact clearly appear (Hodson v. Milward, 3 Grant, 418); and the admission by an attorney of service of a rule to plead is an admission of the regularity of the proceeding. (Abranches v. Schell, 4 Blatchf. 256; Fed. Cas. No. 21.) If a case has been improperly removed, the circuit court may remand it (Pollard v. Dwight, 4 Cranch, 421; Urtetiqui v. D'Arcy, 9 Peters, 692; Ins. Co. v. Francis, 11 Wall. 210; Field v. Lownsdale, Deady, 288; Fed. Cas. No.

4769; *Galvin v. Boutwell* 9 Blatchf. 470; Fed. Cas. No. 5207; *State v. Babcock*, 4 Wash. C. C. 345; Fed. Cas. No. 10163; although the party seeking a removal has filed a cross-bill in the circuit court against parties who are all citizens of a different State (*Donohoe v. Mariposa L. & M. Co.*, 5 Sawy. 163; Fed. Cas. No. 3989). So also, if an order for removal was improperly made. (*Field v. Lownsdale*, Deady, 288; Fed. Cas. No. 4769). That the proceedings sought to be removed are a mere mode of execution and relief inseparably connected with the original judgment will be grounds for remand (*Buford v. Strother*, 10 Fed. Rep. 406; 3 McCrary, 253; *Boyd v. Bradish*, 10 Fed. Rep. 406; 3 McCrary, 253); but otherwise if they constitute an independent controversy, with new parties and new liabilities. (*Buford v. Strother*, 10 Fed. Rep. 406; 3 McCrary, 253.) When a cause is once removed, and there are no jurisdictional objections to its remaining, it will not be remanded for defects or irregularities that can be remedied, or which have not worked any prejudice to the opposite party. (*Dennis v. Alachua Co.*, 3 Woods, 683; Fed. Cas. No. 3791.) Where the cause is one of federal cognizance, the right to have it remanded because of defects in the mode of removal may be waived (*Price v. Somers*, 8 Chic. L. N. 290; Fed. Cas. No. 1856); but there is no waiver of the right where the cause is not really and substantially one of federal jurisdiction. (*Price v. Somers*, 8 Chic. L. N. 290; Fed. Cas. No. 1856.) This section did not intend that the suit should be dismissed or remanded on account of irregularities provided it satisfactorily appears that the circuit court has jurisdiction. (*Osgood v. Chicago etc. R. Co.*, 6 Biss. 330; Fed. Cas. No. 10604; see *Parker v. Overman*, 18 How. 141.) If the citizenship of the petitioner is in dispute, the question will not be decided on motion to remand. (*Heath v. Austin*,

12 Blatchf. 320; Fed. Cas. No. 6305.) Where there is no allegation as to the citizenship of the plaintiff, the cause will be remanded (*Abercrombie v. Dupuis*, 1 Cranch, 343; *Wood v. Wagnon*, 2 Cranch, 9; *Sherman v. Windsor Manuf. Co.*, 11 Fed. Rep. 852; 19 Blatchf. 314); or where citizenship is alleged in the present tense (*Beede v. Cheeney*, 5 Fed. Rep. 388); and the objection will not be entertained if the information concerning his interest is vague or undefined, or there is delay in making the objection. (*Hervey v. Illinois M. R. Co.*, 12 Chic. L. N. 407.) Where a suit is removed on account of alienage, it will not be remanded for the reason that the alien subsequently became a citizen. (*Houser v. Clayton*, 3 Woods, 273; Fed. Cas. No. 6739.) If the citizenship of petitioner is not seriously contested, the case may be remanded on motion. (*Galvin v. Boutwell*, 9 Blatchf. 470; Fed. Cas. No. 5207.) Where a minor was a party, it was held that he was incapable of consenting to the removal, and the cause was remanded. (*Kingsbury v. Kingsbury*, 3 Biss. 60; Fed. Cas. No. 7817.) The motion to remand admits the facts set out in the petition (*Buttner v. Miller*, 1 Woods, 620; Fed. Cas. No. 2254); and the truth of the averments made in the petition cannot then be inquired into. (*Texas v. Texas & Pac. R. Co.*, 3 Woods, 308; Fed. Cas. No. 13848.) If the petition and the record state, as grounds of removal, facts which are not true as to citizenship, or value where value does not appear in the pleadings, issue may be taken thereon by plea of abatement in the circuit court. (*Coal Co. v. Blatchford*, 11 Wall. 172; *Heath v. Austin*, 12 Blatchf. 320; Fed. Cas. No. 6305.) An affidavit cannot be considered in determining the right to remove a cause on a motion to remand. It must be determined by the record presented to the State court (*Camprelle v. Balbach*, 46 Fed. Rep. 81). On a motion to remand

the court will not anticipate the trial of the case, and proceed to construe an act of Congress concerning which a federal question is presented (*Smith v. Chicago, B. & Q. R. Co.*, 30 Fed. Rep. 722). Where the prayer of the petition did not ask for a removal of the entire suit under the act of 1875, the cause will be remanded. (*Clark v. Chicago, M. & St. P. R. Co.*, 11 Fed. Rep. 355; 3 McCrary, 591; *Sweet v. Same*, 11 Fed. Rep. 355; 3 McCrary, 591.) On motion to remand the petition for removal is the basis of jurisdiction (*Kessinger v. Hinkhouse*, 27 Fed. Rep. 883; *McLane v. Leicht*, 27 Fed. Rep. 887). The court, on motion to remand, will not inquire into the truth of the allegation or sufficiency of the pleadings but will leave such matters to the trial of the cause (*Hax v. Caspar*, 31 Fed. Rep. 499). The plaintiff may file the record for the purpose of moving to remand (*Mills v. Newell*, 41 Fed. Rep. 529; *Consolidated Traction Co. v. Guarantors L. & I. Co.*, 78 Fed. Rep. 657; *Thompson v. Chicago, St. P. & K. C. Ry. Co.*, 60 Fed. Rep. 773; *Delbanco v. Singletary*, 40 Fed. Rep. 177; *Anderson v. Appleton*, 32 Fed. Rep. 855).

For failure to file record.—Failure to file a record on or before the first day of the next term of the federal court does not deprive it of jurisdiction (*McLean v. St. P. etc. R. Co.*, 16 Blatchf. 309; Fed. Cas. No. 8892; *Jackson v. Mut. Ins. Co.*, 3 Woods, 413; Fed. Cas. No. 7141; *Hyde v. Phoenix Ins. Co.*, 2 Dill. 525; Fed. Cas. No. 6973; *Eisenmann v. Delemar's G. M. Co.*, 87 Fed. Rep. 248; *Rowell v. Hill*, 28 Fed. Rep. 433; *Henderson v. Cabell*, 43 Fed. Rep. 257; see *Kidder v. Featteau*, 2 Fed. Rep. 616; 1 McCrary, 323); but if not filed in time and the federal court cannot cure the defect, the cause will be remanded. (*Cobb v. Globe etc. Ins. Co.*, 3 Hughes, 452; Fed. Cas. No. 2921; *Bright v. Milwaukee R. Co.*, 14

Blatchf. 214; Fed. Cas. No. 1777; Broadnax v. Eisner, 13 Blatchf. 366; Fed. Cas. No. 1909; McLean v. St. Paul & C. R. Co., 16 Blatchf. 309; Fed. Cas. No. 8892; Wilcox & Gibbs S. M. Co. v. Follett, 2 Flip. 263; Fed. Cas. No. 17643.) Where the record is not filed within the term fixed by the statute remand is within the jurisdiction of federal court (St. Paul & Chicago Ry. v. McLean, 108 U. S. 212). In opposing a motion for remanding a cause, the affidavit by defendant's attorney that a failure to file the record was through inadvertence must state the fact, from which the court may see that it was through inadvertence or accident. (McLean v. St. P. etc. R. Co., 16 Blatchf. 309; Fed. Cas. No. 8892.) Where the cause is improvidently placed on the docket of the circuit court, with or without its order, objection may be made at any time (New Jersey v. Babcock, 4 Wash. C. C. 344; Fed. Cas. No. 10163; McMurdy v. Conn. G. L. Ins. Co., 9 Chic. L. N. 324; Fed. Cas. No. 8903); or if the record shows on its face that the case is not one which may be removed under the statutes. (Eastin v. Rusker, 1 Marsh. J. J. 232; see Brownell v. Gordon, 1 McAll. 207; Fed. Cas. No. 2039.) If a defect or omission in the record can be cured by certiorari such defect is no ground for remanding the cause. (Dennis v. Alachua Co., 3 Woods, 683; Fed. Cas. No. 3791; Cook v. Whitney, 3 Woods, 715; Fed. Cas. No. 3166.) In case of non-appearance the circuit court may remand. (Ward v. Arredondo, 1 Paine, 410; Fed. Cas. No. 17148.) In one case, on failure through neglect of counsel to transmit the record for fifteen months, the cause was remanded to the State court (McGregor v. McGillis, 30 Fed. Rep. 388).

See succeeding note.

Sufficiency of bond.—A federal court will not, on motion to remand, enter into inquiry as to the sufficiency of the sureties on the bond (*Van Allen v. Atchison, C. & P. R. Co.*, 3 Fed. Rep. 545; 1 McCrary, 598), and the cause will not be remanded on this ground (*Dennis v. Alachua Co.*, 3 Woods, 683; Fed. Cas. No. 3791); nor because it is irregular or objectionable in form. (*Hervey v. Illinois M. R. Co.*, 12 Chic. L. N. 407.) A federal court will not, on motion, enter on the inquiry as to the sufficiency of the sureties on a bond approved by the State court. (*Van Allen v. Atchison, C. & P. R. Co.*, 3 Fed. Rep. 545.) If the conditions in the bond omit to provide for the payment of costs, the cause will be remanded. (*Torrey v. Grant Loco Wks.*, 14 Blatchf. 269; Fed. Cas. No. 14105; *McMurdy v. Conn. G. L. Ins. Co.*, 9 Chic. L. N. 324; Fed. Cas. No. 8903; *Sheldrick v. Cockcroft*, 27 Fed. Rep. 579; *Farmers' L. & T. Co. v. C. P. & S. R. Co.*, 9 Biss. 133; Fed. Cas. No. 4665; contra, *Baker v. Peterson*, 4 Dill. 562; Fed. Cas. No. 776; *Dennis v. Alachua Co.*, 3 Woods, 683; Fed. Cas. No. 3791.) The failure of a removal bond to state a penal sum is not material on a motion to remand. (*Johnson v. Austin Mfg. Co.*, 76 Fed. Rep. 616; *Commonwealth of Kentucky v. Louisville Bridge Co.*, 42 Red. Rep. 241.)

Application too late.—The mere failure to move to remand at the same term at which the record is filed will not preclude making the objection at the next term (*Kauffman v. McNutt*, 3 Cent. L. J. 408; *Kain v. Texas P. R. Co.*, 3 Cent. L. J. 12; Fed. Cas. No. 7596; *Carrington v. Florida R. Co.*, 9 Blatchf. 467; Fed. Cas. No. 2447); nor is a neglect until a full term has passed a waiver of the right to do so. (*Young v. Andes Ins. Co.*, 1 Flippin, 599; Fed. Cas. No. 18151.) If the removal is not applied for in time the

cause will be remanded. (Martin's Admrs. v. Balt. & O. Ry. Co., 151 U. S. 673; Brigham v. Thompson Lumber Co., 55 Fed. Rep. 881; Delbanco v. Singleary, 40 Fed. Rep. 177.) But the objection must be seasonably made or it will be deemed waived. (French v. Hay, 22 Wall. 244.) Where a cause is removed too late and plaintiff being ignorant of the construction of the law, files an answer, he may be permitted to withdraw it and file a motion to remand, if he has not unreasonably delayed to assert his rights. (Collins v. Stott, 76 Fed. Rep. 613.) If a cause has been remanded for defects in the petition after the time when an answer is required it is then too late to remove it on an amended petition (Frisbie v. Chesapeake & Ohio Ry. Co., 59 Fed. Rep. 369). And it may be conclusively waived by submitting to the jurisdiction of the circuit court, by taking testimony and by delay for an unreasonable time to object. (French v. Hay, 22 Wall. 244; Ames v. Colorado Cent. R. Co., 4 Dill. 251; Fed. Cas. No. 324; Young v. Andes Ins. Co., 1 Flip. 599; Fed. Cas. No. 18151; Kain v. Tex. & P. R. Co., 3 Cent. L. J. 12; Fed. Cas. No. 7596; Carrington v. Florida R. Co., 9 Blatchf. 467; Fed. Cas. No. 2447.) A motion to remand made after demurrer had been interposed and overruled is not too late if made on the ground of want of jurisdiction in the federal court. (State of Indiana v. Lake Erie & W. Ry. Co., 85 Fed. Rep. 1.) Where the application is made too late the case will not be remanded (Kerting v. Amer. Oleograph Co., 10 Fed. Rep. 17; 11 Biss. 81; Pratt v. Albright, 9 Fed. Rep. 634; 10 Biss. 511), where there is no question as to the jurisdiction of the federal court (Wyly v. Rich. & D. R. Co., 63 Fed. Rep. 487). An application to remand after a case has been referred to a master is too late (Lookout Mountain R. Co. v. Houston, 32 Fed. Rep. 711; Neale v. Foster, 31 Fed. Rep. 53).

Dismissal, want of jurisdiction.—Lack of jurisdiction of the State court from which a cause was removed is ground for dismissing the suit in the federal court (*Bentlif v. London & C. Finance Corp.*, 44 Fed. Rep. 667). It may be dismissed on motion (*Connor v. Vicksburg etc. R. R. Co.*, 36 Fed. Rep. 273; *Ferguson v. Ross*, 38 Fed. Rep. 161). Where a writ of replevin was inadvertently issued, the power of the court is limited to dismissing the writ (*Burdett v. Doty*, 38 Fed. Rep. 491). If the pleadings and evidence together show that the defendants are citizens of the United States and reside in the sense of having their domicile, in the State of which plaintiffs are citizens, the suit must be dismissed for lack of jurisdiction (*Anderson v. Watt*, 138 U. S. 694). The supreme court will take notice of a want of jurisdiction in a circuit court, although the point has not been formally raised either in the circuit or supreme court (*Graves v. Corbin*, 132 U. S. 571; *Hilton v. Dickinson*, 108 U. S. 165; *Morgan v. Gay*, 19 Wall. 81).

Dismissal for collusion and fraud.—Where the federal court obtains jurisdiction as the result of collusion and fraud the court will dismiss the cause (*Cashman v. Amador Canal Co.*, 118 U. S. 58; *Little v. Giles*, 118 U. S. 596; *Morton v. European & N. A. Ry. Co.*, 32 Fed. Rep. 865; *Quincy v. Steel*, 120 U. S. 241; *Davis v. Kansas City etc. Ry. Co.*, 32 Fed. Rep. 863).

§ 113a. **Removal from State courts of Texas must be to proper division of federal district.**—In cases of removal of suits from courts of the State of Texas to the courts of the United States in said State of Texas, such removal shall be to the United States court in the division where the county is

situated from which the removal is made, and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of the United States court, shall be deemed to refer to the terms of the United States courts in such division. (30 U. S. Stats. 397.)

§ 114. Remanding order not appealable.—Whenever any cause shall be removed from any State court into any circuit court of the United States, and the circuit court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed. (25 U. S. Stats. 433.)

Effect of remand.—On the order of the circuit court remanding a cause, the jurisdiction of the State court, ipso facto, reattaches (*Thacher v. McWilliams*, 47 Ga. 306; *Ex parte State Ins. Co.*, 50 Ala. 464; *Germania F. Ins. Co. v. Francis*, 52 Miss. 457), and if no steps are taken to reverse the judgment of the circuit court, the State court may proceed with the cause (*Thompson v. Kendricks*, 5 Hayw. 115), and the State appellate tribunal cannot interfere by certiorari to oust the jurisdiction. (*Jenkins v. Switzer*, 33 Leg. Int. 282.) Where the federal court declines to take jurisdiction and remand the cause, it does not operate as a discontinuance, but is deemed to have been pending in the State court. (*Germania F. Ins. Co. v. Francis*, 52 Miss. 457.) If the circuit court does not obtain jurisdiction it cannot, on remanding the cause, give a judgment for costs, and order execution thereon. (*Mayor v. Cooper*, 6 Wall.

247; but see *Torrence v. Shedd*, 144 U. S. 527.) If on the first removal citizenship is not properly alleged, and the cause remanded, this is conclusive as to the cause of removal, and a second removal for the same cause cannot be had (*Johnson v. Donovan*, 30 Fed. Rep. 395).

§ 115. Jury trial in circuit court.—The trial of issues of fact in the circuit courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, and by the next section. (Rev. Stats. sec. 648.)

Trial by jury.—The trial of issues of fact shall be by jury except in cases of equity or admiralty and maritime jurisdiction. (*Town of Lyons v. Lyons Nat. Bank*, 8 Fed. Rep. 371; 19 Blatchf. 279. See *Howe S. M. Co. v. Edwards*, 15 Blatchf. 405; Fed. Cas. No. 6784; *In re Foley*, 76 Fed. Rep. 390; *Patton v. Southern Ry. Co.*, 82 Fed. Rep. 979.) A circuit court cannot order a peremptory nonsuit against the will of the plaintiff. (*Castle v. Bullard*, 23 How. 172; *Elmore v. Grymes*, 1 Peters, 469; *D'Wolf v. Raubaud*, 1 Peters, 476; *Crane v. Morris*, 6 Peters, 598; *Foote v. Silsby*, 1 Blatchf. 445; Fed. Cas. No. 4916.) Nor can it refer the case to a referee without consent of both parties. (*Howe S. M. Co. v. Edwards*, 15 Blatchf. 405; Fed. Cas. No. 6784; *United States v. Rathbone*, 2 Paine, 578; Fed. Cas. No. 16121.) If a receiver of a federal court would be entitled to a jury trial in the State court upon removal the right is preserved (*Vaney v. Receiver of Toledo St. Ry. Co.*, 67 Fed. Rep. 379). When the material facts involved in an application for a mandamus are admitted by the pleadings a jury trial is unnecessary, and a refusal thereof is not error (*Marion County v. Coler*, 41 U. S. App. 515; 75 Fed. Rep. 352).

§ 116. Trial by court—Waiver of jury.—Issues of fact in civil cases in any circuit court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury. (Rev. Stats. sec. 649.) [See sec. 700.]

Note.—This section is not repealed by the act of March 3, 1875, section three. (Phillips v. Moore, 100 U. S. 208.) Question was discussed in *Town of Lyons v. Lyons Nat. Bank*, 8 Fed. Rep. 371; 19 Blatchf. 279; and section seven hundred of the Revised Statutes was enacted to carry out its provisions. (*Town of Lyons v. Lyons Nat. Bank*, 8 Fed. Rep. 371; 19 Blatchf. 279.) This section does not conflict with section nine hundred and fourteen, Revised Statutes, but leaves it in full force. (*Wear v. Mayer*, 6 Fed. Rep. 660; 2 McCrary, 172.) This section and section seven hundred, Revised Statutes, relate only to the circuit court. (*Howard v. Crompton*, 14 Blatchf. 333; Fed. Cas. No. 6758.)

Waiver of jury trial.—There must be an agreement to waive a jury trial to enable the court to try an issue of fact (*Morgan v. Gay*, 19 Wall. 81; see *Robinson v. Mut. Ben. L. Ins. Co.*, 16 Blatchf. 201; Fed. Cas. No. 11961); but parties may waive without a written stipulation, yet they must file their stipulation if they desire to secure the right of a review in the supreme court on any question of law arising in the trial. (*Kearney v. Case*, 12 Wall. 275; see *Town of Lyons v. Lyons Nat. Bank*, 8 Fed. Rep. 371; *Merril v. Floyd*, 5 U. S. App. 224; 53 Fed. Rep. 172;

Cudahy Packing Co. v. Sioux Nat. Bank, 32 U. S. App. 600; 69 Fed. Rep. 782; Rush v. Newman, 12 U. S. App. 635; 58 Fed. Rep. 158; Abraham v. Levy, 30 U. S. App. 713; 72 Fed. Rep. 124; Branch v. Texas Lumber Mfg. Co., 2 U. S. App. 623; 53 Fed. Rep. 849; Cudahy Packing Co. v. Sioux Nat. Bank, 40 U. S. App. 142; 75 Fed. Rep. 473; Duncan v. Atchison T. & S. Fe Co., 44 U. S. App. 427; 72 Fed. Rep. 808.) But this rule does not apply to an oral stipulation referring the matter to a referee for trial, and the referee makes special findings. (Cudahy Packing Co. v. Sioux Nat. Bank, 40 U. S. App. 142; 75 Fed. Rep. 473; Lyons v. Lyons Nat. Bank, 8 Fed. 371; 19 Blatchf. 279.) Then the stipulation must be in writing, and be filed with the clerk (Kearney v. Case, 12 Wall. 75). The court has no power to order a reference and deprive defendant of his right. (Howe S. M. Co. v. Edwards, 15 Blatchf. 405; Fed. Cas. No. 6784.) A recital in the record that "jury was expressly waived" does not show with sufficient certainty a waiver by stipulation in writing as required. (United States v. Carr, 19 U. S. App. 679; 61 Fed. Rep. 802.)

Findings by the court.—The findings may be general or special (Norris v. Jackson, 9 Wall. 125; Marye v. Strouse, 5 Fed. Rep. 497; 6 Sawy. 204; see Insurance Asso. v. Boon, 95 U. S. 117); and whether general or special, they have the same effect as the verdict of a jury (U. S. v. Dawson, 101 U. S. 569; Norris v. Jackson, 9 Wall. 125); and there must be a finding, either general or special, to authorize a judgment (Insurance Asso. v. Boon, 95 U. S. 117); but if the court omits to file a finding it may do so at a subsequent term. (Insurance Asso. v. Boon, 95 U. S. 117.) If a general finding includes mixed questions of law and fact, it concludes both, except

so far as they may be saved by exceptions. (Norris v. Jackson, 9 Wall. 125.) All that is essential in a special finding is that it shall find the ultimate facts. (Mining Co. v. Taylor, 100 U. S. 37.) It is not a mere report of the evidence, but a statement of the ultimate facts on which the rights of the parties must be determined. (Norris v. Jackson, 9 Wall. 125.) The silence of a special finding as to a fact is equivalent to a finding against the party having the burden of proof of such fact (U. S. v. Harris, 46 U. S. App. 653, 77 Fed. Rep. 821). If the court makes a mere general finding of facts and there are no exceptions to the pleadings or the admission or rejection of evidence there is nothing to review (Campbell Commission Co. v. Trammell, 41 U. S. App. 181; 74 Fed. Rep. 917). A statement of the grounds of decision in the opinion is not equivalent to a special finding of facts (Hinkley v. City of Arkansas City, 32 U. S. App. 640; 69 Fed. Rep. 768; Lehnén v. Dickinson, 148 U. S. 71). It rests in the discretion of the court to which a case is submitted without a jury to make a general finding—as general as the verdict of a jury—instead of special findings (Aetna Life Ins. Co. v. Board of Commrs., 49 U. S. App. 122; 79 Fed. Rep. 575). A general finding is conclusive upon all matters of fact, precisely as the verdict of a jury (Lehnén v. Dickinson, 148 U. S. 71). The court may announce its findings in open court and have them entered in open court as well as to write them out and file them (Aetna Life Ins. Co. v. Board County Commrs., 49 U. S. App. 122; 79 Fed. Rep. 575). Where special findings are irreconcilable with a general verdict, the former controls the latter (Larkin v. Upton, 144 U. S. 19). Where the court finds generally, the losing party has no redress, except for errors occurring in rulings of the court during the progress of the trial (City of Key West v. Baer, 30

U. S. App. 140; 66 Fed. Rep. 440; *Wile v. Farmer's State Bank*, 36 U. S. App. 165; 70 Fed. Rep. 138; *Pacific Postal Tel. Co. v. Fleischner*, 29 U. S. App. 227; 66 Fed. Rep. 899; *Ryan v. Staples*, 40 U. S. App. 748; 78 Fed. Rep. 563). Where the court has made special findings covering the ultimate facts, additional findings cannot be made at the request of a party (*Lang v. Baxter*, 69 Fed. Rep. 905).

§ 117. Division of opinion in civil causes—Decision by presiding judge.—Whenever, in any civil suit or proceeding in a circuit court, held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, there occurs any difference of opinion between the judges as to any matter or thing to be decided, ruled or ordered by the court, the opinion of the presiding justice or judge shall prevail, and be considered the opinion of the court for the time being. (Rev. Stats. 650.)

Note.—No civil suit can be taken to the supreme court except upon final judgment and on appeal or writ of error. (*Robbins v. Fireman's Fund Ins. Co.*, 16 Blatchf. 232; Fed. Cas. No. 11882.) The district judge cannot sit in the circuit court in a case brought there by writ of error from the district court, and such cause cannot be brought to the supreme court on certificate of division. (*U. S. v. Lancaster*, 5 Wheat. 434.) Upon the hearing in the circuit court of an appeal from a judgment of the district court, the district judge who rendered the decision appealed from, although he may, for the information of the court, assign his reasons for that decision, is prohibited from voting or taking part in the judgment of the circuit court. (*United States v. Embolt*, 11

Fed. Rep. 190, note.) On appeal to this court, if it finds that the judgment as rendered is correct, it may simply affirm it; but if it is reversed, all questions certified which are considered in the final determination of the case should be answered. (*United States v. Reese*, 92 U. S. 214.)

§ 118. Division of opinion in criminal cause—**Certificate.**—The Act of 1891 by implication repealed sections 651, 697, Revised Statutes, relating to certificates of division of opinion in criminal cases. (*Rider v. United States*, 163 U. S. 132; *United States v. Hewecker*, 164 U. S. 48.)

§ 119. Division of opinion in civil cause—**Certificate.**—When a final judgment or decree is entered in any civil suit or proceeding before any circuit court held by a circuit justice and a circuit judge or a district judge, or by a circuit judge and a district judge, in the trial or hearing whereof any question has occurred upon which the opinions of the judges were opposed, the point upon which they so disagreed shall, during the same term, be stated under the direction of the judges and certified, and such certificate shall be entered of record. (Rev. Stats. sec. 652.) [See sec. 693.]

Civil suits—Certificate of division.—A certificate of division will not be granted in a civil suit where the matter in dispute does not exceed five thousand dollars. (*Robbins v. Fireman's F. Ins. Co.*, 16 Blatchf. 232; Fed. Cas. No. 11882.) Although the motion under argument was addressed to the discretion of the court, yet if the questions involved the right of the matter they may be certified (*U. S. v. Chicago*, 7 How. 185; see instances, *Hepburn v.*

Ellzey, 2 Cranch, 445; Grant v. Raymond, 6 Peters, 220; Luther v. Borden, 7 How. 1; Wayman v. Southard, 10 Wheat. 1); or where the question of the jurisdiction of the court (United States v. Thomas, 151 U. S. 577); but where the division of opinion arises from some proceeding subsequent to the decision, it cannot be certified. (Devereaux v. Marr, 12 Wheat. 212.) The time, the process, and the manner are subject to the absolute control of Congress. (Ex parte Crane, 5 Peters, 206.) The questions which may be certified are those which arise on the trial, and such as may be presented on the final hearing or plea to the jurisdiction. (Davis v. Braden, 10 Peters, 286.) The question certified must involve a distinct legal point, and sufficient facts must be set forth to show its bearing on the rights of the parties. (Havenmeyer v. Iowa Co., 3 Wall. 294.) A division on a motion within the discretion of the court does not present a point which can be certified. (Davis v. Braden, 10 Peters, 288.) So a question whether a plaintiff in ejectment may enlarge the term of the demise cannot be certified (Smith v. Vaughan, 10 Peters, 366); nor a question in any equity case relating to practice (Packer v. Nixon, 10 Peters, 410); nor has this court jurisdiction on the question of costs. (Bank of U. S. v. Green, 6 Peters, 26.) The question certified must be a question of law and not of fact. (Wilson v. Barnum, 8 How. 258; Dennistoun v. Stewart, 18 How. 565; U. S. v. City Bank, 19 How. 385; Brobst v. Brobst, 4 Wall. 2.) A certificate that the judges differ in opinion is not sufficient unless it states the points on which they differ. (Wolf v. Usher, 3 Peters, 269; Sadler v. Hoover, 7 How. 646.) There must be a distinct statement of what the question is (Sadler v. Hoover, 7 How. 646); a point of law, in precise form, upon a part of the case settled and

stated (*Daniels v. Railroad Co.*, 3 Wall. 250); a single material point in the progress of the cause (*White v. Turk*, 12 Peters, 238), and not on the whole facts of the case (*Adams v. Jones*, 12 Peters, 207); where the point of difference is to be ascertained from the whole record, jurisdiction will be refused (*Wolf v. Usher*, 3 Peters, 269; *Saunders v. Gould*, 4 Peters, 392; *Nesmith v. Sheldon*, 6 How. 41), and the cause remanded. (*Webster v. Cooper*, 10 How. 54.) The power of review is strictly confined to the questions certified. (*Ward v. Chamberlain*, 2 Black, 430.) Where several questions are certified, one being of jurisdiction, the question of jurisdiction must be first determined. (*Silliman v. Hudson Riv. R. Co.*, 1 Black, 582.) Where the supreme court is equally divided, the case will be remitted to enable the court below to take such action as may be advised. (*Hannauer v. Woodruff*, 10 Wall. 482.) The question whether, upon all the facts specially found by the circuit court, when a trial by jury has been waived, the plaintiff has the legal right to recover, is not one which can be taken to the supreme court by a certificate of division of opinion. (*State Bank v. St. Louis Rail. Co.*, 122 U. S. 21.)

Division of opinion—Practice and procedure.—The law gives jurisdiction over the single point on which the judges were divided, and not over the whole case. (*Wayman v. Southard*, 10 Wheat. 20; *Ogle v. Lee*, 2 Cranch, 33.) If the division is merely formal and the whole case is certified, it will be dismissed for want of jurisdiction. (*Luther v. Borden*, 7 How. 1.) If they divide on the whole case and certify the whole case, it will be remanded (*Saunders v. Gould*, 4 Peters, 392; *Harris v. Elliott*, 10 Peters, 25; *Adams v. Jones*, 12 Peters, 207; *White*

v. Turk, 12 Peters, 238; Dennistoun v. Stewart, 18 How. 565); and if the whole case is sent up it will be dismissed, although it is divided into points. (Nesmith v. Sheldon, 6 How. 41; Luther v. Borden, 7 How. 1; Webster v. Cooper, 10 How. 54; Dennistoun v. Stewart, 18 How. 565.) But if several questions involve but little beyond one point, they may be taken upon certificate. (Leland v. Wilkinson, 10 Peters, 294; United States v. Chicago, 7 How. 185.) If the facts are presented in a partial and imperfect form, the case will be remanded. (Perkins v. Hart, 11 Wheat. 237; United States v. City Bank, 19 How. 385; Ogilvie v. Knox Ins. Co., 18 How. 577.) If the particular point certified is not distinctly stated, the case will be dismissed. (Wolf v. Usher, 3 Peters, 269; Sadler v. Hoover, 7 How. 646.) If a certified question pertains to the jurisdiction of the circuit court, and the justices are divided in opinion, no decision will be made on the other points (Silliman v. Hudson Riv. R. Co., 1 Black, 582), and the case will be remanded. (Hannauer v. Woodruff, 10 Wall. 482.) The judgment upon a certificate of division will not prevent the bringing of a writ of error upon the final judgment. (Ogle v. Lee, 2 Cranch, 33.)

CHAPTER IX.

SESSIONS OF CIRCUIT AND DISTRICT COURTS.

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§ 120. **Terms of district courts.**—The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day. (Rev. Stats. sec. 572. See U. S. v. Cornell, 2 Mason, 91.)

ALABAMA.—Northern District, Huntsville, first Monday in April; second Monday in October. (18 U. S. Stat. 196.)

Southern Division, Birmingham, first Monday in March and September. (25 U. S. Stat. 18.)

Middle Division, Montgomery, first Monday in May and November. (18 U. S. Stat. 195.)

Southern District, Mobile, first Monday in May; fourth Monday in November. (26 U. S. Stat. 180.)

ARKANSAS.—Eastern District, Little Rock, first Mondays in April and October.

Eastern District, Eastern Division, Helena, second Mondays in March and October.

Eastern District, Northern Division, Batesville, fourth Monday in May and second Monday in December.

Western District, Texarkana Division, Texarkana, second Mondays in May and November.

Western District, Fort Smith Division, Fort Smith, second Mondays in January and June. (28 U. S. Stat. 591; 30 U. S. Stats.)

CALIFORNIA.—Northern District, San Francisco, first Monday in March; second Monday in July; first Monday in November. (29 U. S. Stat. 135.)

Southern District, Los Angeles, second Monday in January and August. (24 U. S. Stat. 309.)

COLORADO.—Denver, first Tuesday in May and November.

Pueblo, first Tuesday in April.

Del Norte, first Tuesday in August. (24 U. S. Stat. 214.)

CONNECTICUT.—Hartford, fourth Tuesday in May; first Tuesday in December.

New Haven, fourth Tuesday in February and August. (21 U. S. Stat. 41.)

DELAWARE.—Wilmington, second Tuesday in January, April, June and September.

FLORIDA.—Northern District, Tallahassee, first Monday in February.

Pensacola, first Monday in March.

Southern District, Jacksonville, first Monday in December.

Key West, first Monday in May and November.

Tampa, second Monday in February. (24 U. S. Stat. 106; 28 U. S. Stat. 117.)

GEORGIA.—Northern District, Atlanta, second Monday in March; first Monday in October. (23 U. S. Stat. 50; 25 U. S. Stat. 690.)

Western Division, Columbus, first Mondays in May and December. (28 U. S. Stat. 504.)

Southern District, Macon, first Monday in May and October. (21 U. S. Stat. 62.)

Savannah, second Tuesday in February, May, August and November. (R. S. secs. 572, 658.)

Augusta, first Monday in April; third Monday in November. (25 U. S. Stat. 671.)

IDAHO.—Boise City, second Monday in March and September.

Moscow, second Monday in May; fourth Monday in October.

Pocatello, second Monday in April; first Monday in October. (30 U. S. Stat. 424.)

ILLINOIS.—Northern District, Chicago, first Monday in March, May, July and October; third Monday in December.

Peoria, third Monday in April and October. (24 U. S. Stat. 442.)

Southern District, Springfield, first Monday in January and June.

Quincy, first Monday in September. (25 U. S. Stat. 387.)

Cairo, first Monday in March and October. (25 U. S. Stat. 387.)

Danville, first Monday in May. (26 U. S. Stat. 212.)

INDIANA.—Indianapolis, first Tuesday in May and November.

New Albany, first Monday in January and July.

Evansville, first Monday in April and October.

Fort Wayne, second Tuesday in June and December. (18 U. S. Stat. 251; 20 U. S. Stat. 166; 21 U. S. Stat. 511.)

Hammond, third Tuesdays in April and October. (30 U. S. Stats.)

IOWA.—Sioux City, first Tuesday in October and fourth Tuesday in May.

Fort Dodge, second Tuesday in November; second Tuesday in June.

Dubuque, first Tuesday in December; fourth Tuesday in April.

Cedar Rapids, first Tuesday in April; second Tuesday in September.

Southern District, Keokuk, second Tuesday in April, and third Tuesday in October.

Western Division, Council Bluffs, second Tuesday in March, and third Tuesday in September.

Central Division, Des Moines, second Tuesday in May; third Tuesday in November. (29 U. S. Stat. 2.)

KANSAS.—Topeka, second Monday in April. (R. S. sec. 512.)

Leavenworth, second Monday in October. (R. S. sec. 572.)

Fort Scott, first Monday in May, and second Monday of November. (20 U. S. Stat. 355; 28 U. S. Stat. 806.)

Salina, second Monday in May. (25 U. S. 392.)

Wichita, second Monday in March; second Monday in September. (26 U. S. Stat. 129; 28 U. S. Stat. 806.)

KENTUCKY.—Covington, second Monday in May; first Monday in December.

Louisville, third Monday in February; first Monday in October.

Frankfort, first Monday in January; second Monday in June.

Paducah, first Monday in April; third Monday in November.

Owensborough, fourth Monday in January; first Monday in June. (21 U. S. Stat. 45; 25 U. S. Stat. 389.)

LOUISIANA.—Eastern District, New Orleans, third Monday in February, May and November. (25 U. S. Stat. 438.)

Opelousas, first Monday in January and June.

Alexandria, fourth Monday in January and June.

Shreveport, third Monday in February and July.

Monroe, first Monday in April and October.

Baton Rouge, second Monday in April and November. (21 U. S. Stat. 507; 25 U. S. Stat. 488.)

MAINE.—Portland, first Tuesday in February and December.

Bangor, first Tuesday in June.

Bath, first Tuesday in September. (23 U. S. Stat. 1.)

MARYLAND.—Baltimore, first Tuesday in March, June, September and December.

Cumberland, second Monday in May and last Monday in September. (R. S. sec. 572; 27 U. S. Stat. 11.)

MASSACHUSETTS.—Boston, third Tuesday in March; fourth Tuesday in June; second Tuesday in September; first Tuesday in December. (R. S. sec. 572.)

MICHIGAN.—Detroit, first Tuesday in March, June and November.

Marquette, first Tuesday in May and September.

Grand Rapids, first Tuesday in March and October.

Bay City, first Tuesday in May and October. (28 U. S. Stat. 67.)

Port Huron, fourth Monday in January and June. (20 U. S. Stat. 175.)

MINNESOTA.—Winona, first Tuesday in June and December.

Mankato, third Tuesday in April; first Tuesday in November.

St. Paul, fourth Tuesday in June; second Tuesday in January.

Minneapolis, first Tuesday in March and September.

Duluth, second Tuesday in May and October.

Fergus Falls, fourth Tuesday in March and September. (26 U. S. Stat. 73.)

MISSISSIPPI.—Northern District, Eastern Division, Aberdeen, first Monday in April and October; continue twenty-four days. (22 U. S. Stat. 101.)

Western Division, Oxford, first Monday in June and December. (22 U. S. Stat. 101; 24 U. S. Stat. 430; 25 U. S. Stat. 78.)

Southern District, Jackson, first Monday in May and November.

Eastern Division, Meridian, second Mondays of March and September.

Jackson, fourth Monday in January and June.

Western Division, Vicksburg, first Monday in January and July.

Biloxi, third Monday in February and August. (24 U. S. Stat. 430; 25 U. S. Stat. 78; 28 U. S. Stat. 115; 30 U. S. Stats.)

MISSOURI.—Eastern District, St. Louis, first Monday in May and November.

Hannibal, first Monday in May and November. (26 U. S. Stat. 106.)

Kansas City, fourth Monday in April and first Monday in November.

St. Joseph, first Monday in March and third Monday in September.

Jefferson City, third Monday in March and October.

Springfield, first Monday in April and October. (26 U. S. Stat. 369; 27 U. S. Stat. 20.)

MONTANA.—Helena, first Monday in April and November.

Butte City, first Tuesday in February and September. (25 U. S. Stat. 682; 30 U. S. Stat. 685.)

NEBRASKA.—Omaha, first Monday in May and second Monday in November.

Lincoln, third Monday in January and first Monday in October.

Hastings, third Monday in April.

Norfolk, fourth Monday in April. (28 U. S. Stat. 221.)

NEVADA.—Carson, first Monday in February, May and October.

NEW HAMPSHIRE.—Portsmouth, third Tuesday in March, and September.

Concord, third Tuesday in June and December.

Littleton, last Tuesday in August. (27 U. S. Stat. 7.)

NEW JERSEY.—Trenton, third Tuesday in January, April, June and September.

NEW YORK.—Northern District. Albany, third Tuesday in January.

Utica, third Tuesday in March.

Rochester, second Tuesday in May.

Buffalo, third Tuesday in September.

Auburn, third Tuesday in November. (22 U. S. Stat. 32.)

Eastern District, Brooklyn, first Wednesday in each month. (22 U. S. Stat. 32.)

Southern District, New York, first Tuesday in each month. (22 U. S. Stat. 32.)

NORTH CAROLINA.—Eastern District, Elizabeth City, third Monday in April and October.

Newbern, fourth Monday in April and October.

Raleigh, fourth Monday of May, and first Monday of December.

Wilmington, first Monday after fourth Monday in April and October. (28 U. S. Stat. 275.)

Western District, Greensborough, first Monday in April and October.

Statesville, third Monday in April and October.

Asheville, first Monday in May and November. (20 U. S. Stat. 173.)

Charlotte, second Monday in June and December. (20 U. S. Stat. 173.)

NORTH DAKOTA.—Bismarck, first Tuesday in March.

Fargo, third Tuesday in May.

Grand Forks, second Tuesday in November.

Devil's Lake, first Tuesday in July. (28 U. S. Stat. 642.)

OHIO.—Northern District, Cleveland, first Tuesday in February, April and October.

Toledo, first Tuesday in June and December. (22 U. S. Stat. 76.)

Southern District, Cincinnati, first Tuesday in February, April and October.

Columbus, first Tuesday in June and December. (21 U. S. Stat. 64.)

OREGON.—Portland, first Monday in March, July and November. (19 U. S. Stat. 4.)

PENNSYLVANIA.—Eastern District, Philadelphia, third Monday in February, May, August and November.

Western District, Pittsburg, first Monday in May; third Monday in October.

Williamsport, third Monday in June; first Monday in October.

Erie, second Monday in January; third Monday in July. (24 U. S. Stat. 336.)

Eastern District, Scranton, first Monday in March and September. (24 U. S. Stat. 236.)

RHODE ISLAND.—Providence, first Tuesday in February and August.

Newport, second Tuesday in May; third Tuesday in October. (R. S. Sec. 572.)

SOUTH CAROLINA.—Charleston, first Tuesdays in June and December.

Columbia, fourth Tuesday in November. (30 U. S. Stats.)

Western District, Greenville, third Tuesdays in April and October. (30 U. S. Stats.)

SOUTH DAKOTA.—Sioux Falls, first Tuesday in April and third Tuesday in October.

Pierre, first Tuesday in March and October.

Deadwood, first Tuesday in February and September.

Aberdeen, first Tuesday in May; third Tuesday of November. (28 U. S. Stat. 5.)

TENNESSEE.—Eastern District, Knoxville, second Mondays in March and September. (30 U. S. Stats.)

Middle District, Nashville, third Monday in April and October. (21 U. S. Stat. 175.)

Western District, Jackson, fourth Monday in April and October; and such times as judges shall fix. (21 U. S. Stat. 175.)

Memphis, fourth Monday in May and November.

Chattanooga, first Monday in April and October. (21 U. S. Stat. 175.)

TEXAS.—Northern District, Dallas, second Monday in January; third Monday in May.

Fort Worth, first Monday of March and the third Monday in September.

Abilene, third Mondays in March and October.

San Angelo, fourth Monday in March and first Monday in November. (29 U. S. Stat. 456.)

Waco, second Monday in April; third Monday in November.

Eastern District, Galveston, third Monday in February and October.

Tyler, first Monday in January and September.

Jefferson, fourth Monday in January and September. (23 U. S. Stat. 48.)

Paris, first Monday in April; third Monday in November. (27 U. S. Stat. 15.)

Beaumont, first Mondays in June and December. (29 U. S. Stat. 516.)

Western District, Brownsville, first Monday in January; second Monday in June.

San Antonio, first Monday in May and November.

El Paso, first Monday in April and October.

Austin, first Monday in February and July. (21 U. S. Stat. 3.)

Laredo, third Monday in March; first Monday in December. (30 U. S. Stats.)

UTAH.—Salt Lake, first Monday in May and December.

Ogden, first Monday of March and September. (29 U. S. Stat. 621.)

VERMONT.—Burlington, fourth Tuesday in February.

Windsor, third Tuesday in May.

Rutland, first Tuesday in October. (18 U. S. Stat. 53; 27 U. S. Stat. 15; 28 U. S. Stat. 99.)

VIRGINIA.—Eastern District, Richmond, first Monday in April and October.

Alexandria, first Monday in January and July.

Norfolk, first Monday in May and November. (26 U. S. Stat. 474.)

Western District, Danville, Tuesday after second Monday in April and November.

Lynchburg, Tuesday after second Monday in March and September.

Abingdon, Tuesday after first Monday in May and October.

Harrisonburgh, Tuesday after first Monday in June and December. (26 U. S. Stat. 474.)

WASHINGTON.—Spokane Falls, first Tuesday in September and April.

Walla Walla, first Tuesday in November and May.
Seattle, first Tuesday in December and June.

Tacoma, first Tuesday in February and July. (26 U. S. Stat. 45.)

WEST VIRGINIA.—Wheeling, first day of April and twentieth day of September.

Clarksburg, first day of April and fifteenth day of October.

Charlestown, first day of May and tenth day of November. (20 U. S. Stat. 27.)

Martinsburg, fifteenth day of October. (25 U. S. Stat. 151; 27 U. S. Stat. 254.)

WISCONSIN.—Oshkosh, second Tuesday in June.
Milwaukee, first Monday in January and October. (18 U. S. Stat. 75.)

Eau Claire, first Tuesday in June.

La Crosse, third Tuesday in September.

Madison, first Tuesday in December. (24 U. S. Stat. 337; 27 U. S. Stat. 12.)

Oshkosh, second Tuesday in June. (27 U. S. Stats. 12.)

WYOMING.—Sheridan, one term a year. (28 U. S. Stats. 75.)

Cheyenne, second Monday in May and November.

Evanston, first Monday in July. (27 U. S. Stat. 39.)

But one sitting.—From the commencement to the end of a term there is, in contemplation of law, but one sitting, although there may be adjournments or recesses. (The Canary No. 2, 22 Fed. Rep. 536.)

§ 121. **Terms of circuit courts.**—The regular terms of the circuit courts shall be held at the times and places following:

ALABAMA.—Southern District, Mobile, first Monday in May; fourth Monday in November.

Middle Division, Montgomery, first Monday in May and November. (26 U. S. Stat. 180.)

Northern District, Huntsville, first Monday in April; second Monday in October. (26 U. S. Stat. 180.)

Southern Division, Birmingham, first Monday in March and September. (23 U. S. Stat. 18.)

ARKANSAS.—Eastern District, Western Division, Little Rock, second Monday in April, and the fourth Monday in October.

Eastern District, Eastern Division, Helena, second Mondays in March and October.

Eastern District, Northern Division, Batesville, fourth Monday in May and second Monday in December.

Western District, Texarkana Division, Texarkana, second Mondays in May and November.

Western District, Fort Smith Division, Fort Smith, second Mondays in January and June. (29 U. S. Stat. 591; 30 U. S. Stats.)

CALIFORNIA.—Northern District, San Francisco, first Monday in March; second Monday in July; first Monday in November. (29 U. S. Stat. 135.)

Southern District, Los Angeles, second Monday in January and August. (24 U. S. Stat. 309.)

COLORADO.—Denver, first Tuesday in May and November.

Pueblo, first Tuesday in April.

Del Norte, first Tuesday in August. (24 U. S. Stat. 214.)

CONNECTICUT.—Hartford, second Tuesday of October. (29 U. S. Stats. 317.)

New Haven, fourth Tuesday in April. (Rev. Stats. sec. 658.)

DELAWARE.—Wilmington, third Tuesday in June and October.

FLORIDA.—Northern District, Tallahassee, first Monday in February.

Pensacola, first Monday in March.

Southern District, Jacksonville, first Monday in December.

Key West, first Monday in May and November.

Tampa, second Monday in February. (24 U. S. Stat. 106.)

GEORGIA.—Atlanta, first Monday in October. (24 U. S. Stat. 50.)

Columbus, first Monday in May and December.

Southern District, Savannah, second Monday in April; Thursday after first Monday in November. (R. S. secs. 572 and 658.)

Macon, first Monday in May and October. (21 U. S. Stat. 62.)

Augusta, first Monday in April; third Monday in November. (25 U. S. Stat. 671.)

IDAHO.—Boise City, second Monday in March and September.

Moscow, second Monday in May and fourth Monday in October.

Pocatello, second Monday in April, and first Monday in October. (30 U. S. Stat. 424; 27 U. S. Stat. 572.)

ILLINOIS.—Northern District, Chicago, first Monday in July; third Monday in December.

Southern District, Springfield, first Monday in January and June.

Peoria, third Monday in April and October. (24 U. S. Stat. 442.)

Quincy, first Monday in September. (25 U. S. Stat. 387.)

Cairo, first Monday in March and October. (25 U. S. Stat. 387.)

Danville, first Monday in May. (26 U. S. Stat. 212.)

INDIANA.—Indianapolis, first Tuesday in May and November.

Hammond, third Tuesdays in April and October. (30 U. S. Stats.)

New Albany, first Monday in January and July. (8 U. S. Stat. 251.)

Evansville, first Monday in April and October. (20 U. S. Stat. 166.)

Fort Wayne, second Tuesday in June and December. (21 U. S. Stat. 511.)

IOWA.—Northern District, Sioux City, first Tuesday in October and fourth Tuesday in May.

Fort Dodge, second Tuesday in November; second Tuesday in June.

Dubuque, first Tuesday in December; fourth Tuesday in April.

Cedar Rapids, first Tuesday in April; second Tuesday in September.

Southern District, Western Division, Keokuk, second Tuesday in April and third Tuesday in October.

Council Bluffs, second Tuesday in March and third Tuesday in September.

Central Division, Des Moines, second Tuesday in May; third Tuesday in November. (29 U. S. Stat. 2.)

KANSAS.—Leavenworth, first Monday in June.

Fort Scott, first Monday in May, and second Monday in November.

Topeka, fourth Monday in November.

Seat of Government, fourth Monday of November.

Wichita, second Monday in March; second Monday in September. (26 U. S. Stat. 129; 27 U. S. Stat. 24; 28 U. S. Stat. 806.)

KENTUCKY.—Covington, second Monday in May; first Monday in December.

Louisville, third Monday in February; first Monday in October.

Frankfort, first Monday in January; second Monday in June.

Paducah, first Monday in April; third Monday in November. (21 U. S. Stat. 45; 24 U. S. Stat. 45.)

Owensborough, fourth Monday in January; first Monday in June. (25 U. S. Stat. 389.)

LOUISIANA.—New Orleans, fourth Monday in April; first Monday in November. (25 U. S. Stat. 438.)
Opelousas, first Monday in January and June.

Alexandria, fourth Monday in January and June.
Shreveport, third Monday in February and July.

Monroe, first Monday in April and October. (21 U. S. Stat. 507.)

Baton Rouge, second Monday in April and November. (25 U. S. Stat. 438; 27 U. S. Stat. 11; 24 U. S. Stat. 433.)

MAINE.—Portland, twenty-third of April and September. (R. S. sec. 573.)

MARYLAND.—Baltimore, first Monday in April and November.

Cumberland, second Monday in May, and last Monday in September. (26 U. S. Stat. 73.)

MASSACHUSETTS.—Boston, fifteenth day of May and October.

MICHIGAN.—Detroit, first Tuesday in March, June, and November.

Bay City, first Tuesdays of May and October. (28 U. S. Stat. 67.)

Marquette, first Tuesday in May and September.

Grand Rapids, first Tuesday in March and October.

MINNESOTA.—Winona, first Tuesday in June and December.

Mankato, third Tuesday in April; first Tuesday in November.

St. Paul, fourth Tuesday in June; second Tuesday in January.

Minneapolis, first Tuesday in March and September.

Duluth, second Tuesday in May and October.

Fergus Falls, fourth Tuesday in March and September. (26 U. S. Stat. 73.)

MISSISSIPPI.—Aberdeen, first Monday in April and October, and continues twenty-four days.

Oxford, first Monday in June and December. (25 U. S. Stat. 655; 22 U. S. Stat. 101.)

Southern District, Western Division, Vicksburg, first Monday in January and July, for four weeks. (24 U. S. Stat. 430.)

Southern Division, Mississippi City, third Monday in February and August. (25 U. S. Stat. 78.)

Eastern Division, Meridian, second Mondays of March and September. (28 U. S. Stat. 114.)

MISSOURI.—Eastern District, St. Louis, third Monday in March and September.

Northern Division, Hannibal, first Monday in May and November. (26 U. S. Stat. 106.)

Western District, Kansas City, fourth Monday in April and first Monday in November.

St. Joseph, first Monday in March and third Monday in September.

Jefferson City, third Monday in March and October.

Springfield, first Monday in April and October. (26 U. S. Stat. 369.)

MONTANA.—Helena, first Monday in April and November.

Butte City, first Tuesday in February and September. (25 U. S. Stat. 682.)

NEBRASKA.—Omaha, first Monday in May, and second Monday in November.

Lincoln, third Monday in January, and the first Monday in October.

Hastings, third Monday in April.

Norfolk, fourth Monday in April. (28 U. S. Stat. 221.)

NEVADA.—Carson, third Monday in March; first Monday in November. (19 U. S. Stat. 4.)

NEW HAMPSHIRE.—Portsmouth, eighth day of May.

Concord, eighth day of October. (21 U. S. Stat. 330; 27 U. S. Stat. 7.)

Littleton, last Tuesday in August. (21 U. S. Stat. 330; 27 U. S. Stat. 7.)

NEW JERSEY.—Trenton, fourth Tuesday in March and September.

NEW YORK.—Northern District, Canandaigua, third Tuesday in June.

Syracuse, third Tuesday in November.

Albany, third Tuesday in January.

Utica, third Tuesday in March. (22 U. S. Stat. 32.)

Southern District, New York, first Monday in April; third Monday in October. (Rev. Stats. sec. 658.)

Eastern District, Brooklyn, first Wednesday in each month. (Rev. Stats. sec. 658.)

NORTH CAROLINA.—Eastern District, Raleigh, fourth Monday in May; first Monday in December.

Wilmington, first Monday after the fourth Monday in April and October. (28 U. S. Stat. 275.)

Western District, Greensborough, first Monday in April and October.

Statesville, third Monday in April and October.

Asheville, first Monday in May and November. (20 U. S. Stat. 173.)

Charlotte, second Monday in June and December. (20 U. S. Stat. 173.)

NORTH DAKOTA.—Bismarek, first Tuesday of March of each year.

Fargo, third Tuesday of May of each year.

Grand Forks, second Tuesday of November.

Devil's Lake, first Tuesday in July. (28 U. S. Stat. 692.)

OHIO.—Northern District, Cleveland, first Tuesday in February, April and October of each year.

Toledo, first Tuesday in June and December of each year. (22 U. S. Stat. 176.)

Southern District, Cincinnati, first Tuesday in February, April and October.

Columbus, first Tuesday in June and December of each year. (21 U. S. Stat. 64.)

OREGON.—Portland, second Monday in April and first Monday in October of each year. (19 U. S. Stat. 4.)

PENNSYLVANIA.—Western Division, Scranton, first Monday in March and September. (24 U. S. Stat. 336.)

Erie, second Monday in January; third Monday in July.

Pittsburgh, second Monday in November and May.

Williamsport, third Monday in June and September. (24 U. S. Stat. 336.)

Eastern District, Philadelphia, first Monday in April and October. (24 U. S. Stat. 336.)

RHODE ISLAND.—Providence, fifteenth day of June and November. (R. S. sec. 572.)

SOUTH CAROLINA.—Greenville, third Tuesdays in April and October.

Charleston, first Tuesday in April.

Columbia, fourth Tuesday in November. (26 U. S. Stat. 71; 27 U. S. Stat. 392; 30 U. S. Stats.)

SOUTH DAKOTA.—Sioux Falls, first Tuesday in April and third Tuesday in October.

Deadwood, first Tuesday in February and September.

Pierre, first Tuesday in March and October.

Aberdeen, first Tuesday of May, and third Tuesday of November. (28 U. S. Stat. 5.)

TENNESSEE.—Eastern District, Knoxville, second Monday in March and September. (29 U. S. Stat. 39.)

Middle District, Nashville, third Monday in April and October. (21 U. S. Stat. 175.)

Western District, Memphis, fourth Monday in May and November.

Chattanooga, first Monday in April and October of each year. (21 U. S. Stat. 175; 20 U. S. Stat. 235.)

Jackson, at such times as judges shall fix.

TEXAS.—Northern District, Dallas, second Monday in January; third Monday in May.

Fort Worth, first Monday in March, and third Monday in September.

Abilene, third Monday in March and October.

San Angelo, fourth Monday in March, and first Monday in November.

Waco, second Monday in April; third Monday in November.

Eastern District, Galveston, third Monday in February and October.

Tyler, second Monday in January and May.

Jefferson, fourth Monday in January and September. (23 U. S. Stat. 48.)

Paris, first Monday in April; third Monday in November. (25 U. S. Stat. 786.)

Beaumont, first Mondays in June and December. (29 U. S. Stat. 516.)

Western District, Brownsville, first Monday in January; second Monday in June.

San Antonio, first Monday in May and November.

El Paso, first Monday in April and October.

Austin, first Monday in February and July. (20 U. S. Stat. 3.)

Laredo, third Monday in March and first Monday in December. (30 U. S. Stats.)

UTAH.—Same as district court, ante, p. 602.

VERMONT.—Burlington, fourth Tuesday in February.

Windsor, third Tuesday in May.

Rutland, first Tuesday in October. (18 U. S. Stat. 53; 28 U. S. Stat. 99.)

VIRGINIA.—Eastern District, Richmond, first Monday in April and October.

Alexandria, first Monday in January and July.

Norfolk, first Monday in May and November. (26 U. S. Stat. 474.)

Western District, Danville, Tuesday after second Monday in April and November.

Lynchburg, Tuesday after second Monday in March and September.

Abingdon, Tuesday after first Monday in May and October.

Harrisonburgh, Tuesday after first Monday in June and December. (26 U. S. Stat. 474; 26 U. S. Stat. 45.)

WASHINGTON.—Seattle, first Tuesday in June and December.

Walla Walla, first Tuesday in May and November.

Spokane Falls, first Tuesday in April and September.

Tacoma, first Tuesday in February and July. (26 U. S. Stat. 45.)

WEST VIRGINIA.—Martinsburgh, fifteenth day of October. (25 U. S. Stat. 151; 27 U. S. Stat. 254.)

Parkersburgh, tenth day of January and June. (20 U. S. Stat. 259.)

Wheeling, first day of April, and twentieth day of September.

Clarksburg, fifteenth day of April, and first day of October.

Charleston, first day of May, and tenth day of November.

WISCONSIN.—Eastern District, Milwaukee, first Monday in January and October.

Oshkosh, second Tuesday in June. (27 U. S. Stat. 12.)

Western District, Eau Claire, first Tuesday in June.

La Crosse, third Tuesday in September.

Madison, first Tuesday in December in each year. (24 U. S. Stat. 337.)

WYOMING.—Sheridan, one term a year. (28 U. S. Stat. 75.)

Cheyenne, on the second Monday of May and November.

Evanston, on the first Monday in July. (26 U. S. Stat. 39; 27 U. S. Stat. 225.)

§ 122. Effect of altering terms.—No action, suit, proceeding, or process in any district or circuit court shall abate or be rendered invalid by

reason of any act changing the time of holding such court; but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof. (Rev. Stats. sec. 573. See secs. 572, 658, 660.)

Note.—See note to next section.

§ 123. Change of terms.—All causes, processes, suits, and proceedings, now pending or commenced for said terms of court, or hereafter to be commenced, shall be continued and returned to said courts at the several times herein specified. (Feb. 9, 1874, Rev. Stats. sec. 72.)

Arkansas, 26 U. S. Stats. 17; 29 U. S. Stats. 591; 30 U. S. Stats.; Idaho, 28 U. S. Stats. 5; 27 U. S. Stats. 73; Indiana, 18 U. S. Stats. 251; Iowa, 25 U. S. Stats. 87; 29 U. S. Stats. 2; Missouri, 25 U. S. Stats. 497; 27 U. S. Stats. 20; Nebraska, 25 U. S. Stats. 483; North Dakota, 26 U. S. Stats. 68; 28 U. S. Stats. 642; Ohio, 26 U. S. Stats. 709; South Dakota, 28 U. S. Stats. 6; Tennessee, 29 U. S. Stats. 39; 30 U. S. Stats.; Texas, 26 U. S. Stats. 3; 29 U. S. Stats. 456; Utah, 29 U. S. Stats. 621.

§ 124. Courts always open for certain purposes.—The district courts, as courts of admiralty, and as courts of equity, so far as equity jurisdiction has been conferred upon them, shall be deemed always open, for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any district judge may, upon reasonable notice to the parties, make and direct

and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable, of course, according to the rules and practice of the court. (Rev. Stats. sec. 574.)

In case of seizure under the embargo laws, an order for release made in chambers is valid. (U. S. v. *The Little Charles*, 1 Brock. 380; Fed. Cas. No. 15,613.)

A judge has no power in vacation, out of court, to recall executions without notice to the judgment creditor. (*Freeman v. Dawson*, 110 U. S. 264.)

§ 125. **District court open for admiralty cases.**—The district court shall at all times be open for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury. (Florida S. D., Rev. Stats. sec. 575; Wisconsin, Rev. Stats. sec. 576.)

§ 126. **Terms in Kentucky and Indiana.**—In the districts of Kentucky and Indiana the terms of the district courts shall not be limited to any particular number of days, nor shall it be necessary to adjourn by reason of the intervention of a term of the court elsewhere; but the court intervening may be adjourned over till the business of the court in session is concluded. (Rev. Stats. sec. 577.)

§ 127. **Monthly adjournments for trial of criminal causes.**—District courts shall hold monthly

adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases. (Rev. Stats. sec. 578.)

§ 128. **Adjourned terms.**—The judge of any district court in Indiana, Kentucky, Louisiana, Michigan, Ohio, Pennsylvania, and Texas may adjourn the same from time to time, to meet the necessities or convenience of the business. (Rev. Stats. sec. 579.)

§ 129. **Adjourned terms in Kentucky and Indiana.**—In the districts of Kentucky and Indiana the intervention of a term of the district court at another place, or of a circuit court, shall not preclude the power to adjourn over to a future day. (Rev. Stats. sec. 580.)

§ 130. **Special terms.**—A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. And any business may be transacted at such special term which might be transacted at a regular term. (Rev. Stats. sec. 581.)

Illinois.—The judges of the United States circuit or district court for said district may, by order, from time to time appoint and hold additional special terms of said court in said district for the disposal of the unfinished business thereof, whenever the interests of

the public and the condition of the docket shall so require. (24 U. S. Stats. 442; 25 U. S. Stats. 337; 26 U. S. Stats. 212.)

Michigan.—There shall also be held a special or adjourned term of the district court at said Bay City for the hearing of admiralty causes, beginning in the month of February in each year. (28 U. S. Stats. 67.)

Mississippi.—The judge of the United States courts for said northern district may, by order, from time to time appoint and hold not more than two additional special terms of said courts in any one year in each division, nor for a longer period than twelve judicial days for each term, for the disposal of the unfinished business thereof, whenever the interests of the public and the condition of the docket shall so require. (22 U. S. Stats. 101.)

§ 131. **Tennessee**—When circuit judges may act as district judges.—In the case of the non-attendance of the district judge of Tennessee at any term of the district court in either of the districts thereof, the circuit justice, or circuit judge of the circuit to which such district belongs, may hold such term, and shall have and exercise the jurisdiction and powers given by law to a district judge. (Rev. Stats. sec. 582.)

§ 132. **Adjournment**—Non-attendance of the judge.—If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, the court may be adjourned by the marshal, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct. (Rev. Stats. sec. 583.)

§ 133. **Adjournment, certain States.**—If the judge of any district court in Alabama, California, Georgia, Indiana, Iowa, Kentucky, North Carolina, Tennessee, or West Virginia is not present at the time for opening the court, the clerk may open and adjourn the court from day to day for four days; and if the judge does not appear by two o'clock, afternoon of the fourth day, the clerk shall adjourn the court to the next regular term. But this section is subject to the provisions of the preceding and next sections. (Rev. Stats. sec. 584.)

§ 134. **Kentucky and Indiana.**—In the districts of Indiana and Kentucky, the district judge, in the case provided in the preceding section, may, by a written order to the clerk within the first three days of his term, adjourn the district court to a future day within thirty days of the first day. The clerk shall give notice of such adjournment by posting a copy of said order on the front door of the courthouse where the court is to be held. (Rev. Stats. sec. 585.)

§ 135. **Intermediate terms.**—Whenever the judge of any district court in the districts of California, Iowa, and Tennessee fails to hold any regular term thereof, it shall be his duty, if it appears that the business of the court requires it, to hold an intermediate term. Such intermediate term shall be appointed by an order under his hand and seal, addressed to the clerk and marshal, at least thirty days previous to the time fixed therein

for holding it, and the order shall be published the same length of time in the several newspapers published within such districts respectively. And at such intermediate term the business of the court shall have reference to and be proceeded with in the same manner as if it were a regular term. (Rev. Stats. sec. 586.)

§ 136. Business certified to circuit court.—When satisfactory evidence is shown to the circuit judge of any circuit, or, in his absence, to the circuit justice allotted to the circuit, that the judge of any district therein is disabled to hold a district court and to perform the duties of his office, and an application accordingly is made in writing to such circuit judge or justice, by the district attorney or marshal of the district, the said judge or justice, as the case may be, may issue his order in the nature of a certiorari, directed to the clerk of such district court requiring him forthwith to certify into the next circuit court to be held in said district all suits and processes, civil and criminal, depending in said district court, and undetermined, with all the proceedings thereon, and all the files and papers relating thereto. Said order shall be immediately published in one or more newspapers printed in said district, at least thirty days before the session of such circuit court, and shall be sufficient notification to all concerned; and thereupon the circuit court shall proceed to hear and determine the suits and processes so certified. And all bonds and recognizances taken for or re-

turnable to such district court shall be held to be taken for and returnable to said circuit court, and shall have the same effect therein as they could have had in the district court to which they were taken. (Rev. Stats. sec. 587.)

The circuit court must remand the certified cases to the district court if the disability terminates in death. (Ex parte United States, 1 Gall. 338; Fed. Cas. No. 14411.)

§ 137. Suits brought in district court after order to certify to circuit court.—When an order has been made as provided in the preceding section, the clerk of the district court shall continue, during the disability of the district judge, to certify, as aforesaid, all suits, pleas, and processes, civil and criminal, thereafter begun in said court, and to transmit them to the circuit court next to be held in that district; and the said court shall proceed to hear and determine them as provided in said section; provided, that when the disability of the district judge ceases, or is removed, the circuit court shall order all such suits and proceedings then pending and undetermined therein, in which the district courts have an exclusive original cognizance, to be remanded, and the clerk of such court shall transmit the same, with all matters relating thereto, to the district court next to be held in that district; and the same proceedings shall then be had in the district court as would have been had if such suits had originated or been continued therein. (Rev. Stats. sec. 588. See Ex parte U. S., 1 Gall. 338.)

§ 138. Powers of district judge vested, during disability, in circuit judge.—In the case provided in the two preceding sections the circuit judge, and in his absence the circuit justice, shall have and exercise, during such disability, all the powers of every kind vested by law in such district judge. But this provision does not require them to hold any special court, or court of admiralty, at any other time than that fixed by law for holding the circuit court in said district. (Rev. Stats. sec. 589.)

In case of the disqualification of the district judge the duties are to be performed by a justice allotted to the circuit, and by the second section of the act of April 10, 1869 (16 U. S. Stats. 44), the same power is conferred on a circuit judge. (*Wallace v. Loomis*, 97 U. S. 146.)

§ 139. Orders in admiralty—Clerk.—When the business of a district court is certified into the circuit court on account of the disability of the district judge, the district clerk shall be authorized, by order of the circuit judge, or in his absence, of the circuit justice within whose circuit such district is included, to take, during such disability, all examinations and depositions of witnesses, and make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction. (Rev. Stats. sec. 590; 18 U. S. Stats. 317.)

§ 140. District judge designated to perform duties of disabled judge.—When any district judge

is prevented, by any disability, from holding any stated or appointed term of his district court, or of the circuit court in his district, in the absence of the other judges, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said courts, and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the district clerk to the judge so designated and appointed. (Rev. Stats. sec. 591.)

Note.—The appointment of the judge so designated should be filed in the office of the clerk of the district court, but the provision of the statute being directory only, a failure to file as directed does not invalidate the appointment. (*National Home etc. v. Butler*, 33 Fed. Rep. 374.) The power to designate a district judge to hold court in case of disability under this section, as it originally existed in the Act of July 29, 1850 (9 Stats. 442), did not extend to the case of a vacancy. (9 Ops. Atty.-Gen. 131; *Ball v. United States*, 140 U. S. 118.) The acts of a judge *de facto* are not open to collateral attack. (*Norton v. Shelby Co.*, 118 U. S. 425, 30 L. ed. 178; *In re Manning*, 139 U. S. 504, 35 L. ed. 264; *Ball v. United States*, 140 U. S. 118; *McDowell v. United States*, 42 U. S. App. 1; 74 Fed. Rep. 403; *ib.* 159 U. S. 596.)

§ 141. **Designation of judge in case of accumulation of business.**—When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof; and each of the said district judges may, in case of such appointment, hold separately at the same time a district or circuit court in such district, and discharge all duties of a district judge therein; but no such judge shall hear appeals from the district court. (Rev. Stats. sec. 592.)

§ 142. **Designation of another judge to be by chief justice.**—If the circuit judge and circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the courts and transact the business for which he is designated, the district clerk shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint, in the manner aforesaid, the judge of any district within such circuit or within any circuit next contiguous; and said ap-

pointment shall be transmitted to the district clerk, and be acted upon by him as directed in the preceding section. (Rev. Stats. sec. 593.)

§ 143. Revocation and new appointment.—

The circuit judge, or circuit justice, or the chief justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge within the said circuits, for the duties and with the powers mentioned in the three preceding sections, and to revoke any previous designation and appointment. (Rev. Stats. sec. 594.)

§ 144. Duty of judge to comply with designation.—It shall be the duty of the district judge, who is designated and appointed under either of the four preceding sections, to discharge all the judicial duties for which he is so appointed, during the continuance of such disability, or in the case of an accumulation of business, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district. (Rev. Stats. sec. 595.)

§ 145. Designation of district judge when public interest requires.—It shall be the duty of every circuit judge, whenever in his judgment the public interest so requires, to designate and appoint,

in the manner and with the powers provided in section five hundred and ninety-one, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit; and it shall be the duty of the district judge so designated and appointed to hold the district or circuit court as aforesaid. (Rev. Stats. sec. 596; 21 U. S. Stats. 454.)

Under this section the circuit judge, whenever in his judgment the public interest requires, can designate and appoint the district judge of any judicial district within his circuit to hold the district or circuit court. An appointment should be filed and entered on the minutes, under section 591, ante. (Ball v. United States, 140 U. S. 118.) The district judge of one district appointed to hold court in another district, can, while holding such court, where the parties consent, hear and dispose of a criminal case on error from a district court. (Harmon v. United States, 43 Fed. Rep. 817.)

§ 146. Expenses of district judge—New York.—Whenever a district judge from another district holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and shall be allowed in the marshal's account. (Rev. Stats. sec. 597.)

§ 147. Disability of judges in Florida.—When a certificate of the judge of either of the districts

of Florida, stating that he is disabled to hold any regular, special, or adjourned term of the court of such district, and requesting the judge of the other district to hold the same, is filed in the clerk's office of the place where it is to be held, the judge of the other district is authorized to hold such courts, and to exercise all the powers of district judge in the district of the judge so certifying. (Rev. Stats. sec. 598.)

§ 148. Disability of judge of northern district of New York.—Whenever the judge of the northern district of New York is disabled to perform the duties of his office, it shall be the duty of the judge of the southern district, upon receiving from him notice thereof, to hold the district court, and to perform all the duties of district judge for such district. And whenever the judge of the southern district is so disabled, it shall be the duty of the judge of the eastern district, upon like notice, to hold the district court, and to perform all the duties of district judge for the southern district. In such cases the said judges, respectively, shall have the same powers as are vested in the judge so disabled. (Rev. Stats. sec. 599.)

§ 149. District judge of eastern district of New York may sit in southern district.—Whenever the judge of the southern district of New York deems it desirable, on account of the pressure of public business or other cause, that the judge of the eastern district shall perform the duties of a district judge in the southern district, an order to that ef-

fect may be entered upon the records of the district court thereof; and thereupon the judge of the eastern district shall have power to hold the district court, and to perform all the duties of district judge for the southern district. (Rev. Stats. sec. 600.)

§ 150. When district judge is interested in suit pending.—Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof, with all the proceedings in the suit, shall be forthwith certified to the next circuit court for the district; and if there be no circuit court therein, to the next circuit court in the State; and if there be no circuit court in the State, to the next convenient circuit court in an adjoining State; and the circuit court shall, upon the filing of such record with its clerk, take cognizance of and proceed to hear the case, in like manner as if it had originally and rightfully been commenced therein. (Rev. Stats. sec. 601.)

Note.—The judge may order the record of a suit in which he is interested to be transferred to the circuit court (*Spencer v. Lapsley*, 20 How. 264); and the district judge of Texas has power to transfer a suit to the circuit court of the district of Louisiana. (*Spencer*

v. Lapsley, 20 How. 264.) So a suit was transferred to the northern district of New York when the State was divided. (U. S. v. Woolen Cloths, 1 Paine, 436; Fed. Cas. No. 15150.) A district judge who is a resident citizen and taxpayer of a county is not disqualified by pecuniary interest from sitting in a case which involves the validity of bonds issued by the county. (Wade v. Travis County, 72 Fed. Rep. 985.)

§ 151. Continuances by vacancy in office of district judge.—When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and qualification of his successor, except when such first-mentioned term is held as provided in the next section. (Rev. Stats. sec. 602.)

Vacancy in office of district judge.—When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court were continued, of course, until the next stated term after the appointment and qualification of his successor, except when that term might be held as provided in section 603. (Ball v. United States, 140 U. S. 118.) During the continuance of a vacancy in the office of a judge of a district court for a district, the limits of which are coextensive with those of the State, all judicial action must remain in abeyance until the vacancy be filled or until a judge shall have been designated to fill the office temporarily. (United States v. Murphy, 82 Fed. Rep. 893.) A district judge acting in another district in which the office of judge is vacant, by virtue of an appointment, regular on its face, is an officer de facto, and his orders continuing the term from day to day cannot be questioned on

the ground that a circuit judge has no power to make such an appointment. (*McDowell v. United States*, 42 U. S. App. 1; 74 Fed. Rep. 403; *McDowell v. United States*, 159 U. S. 596.)

Construction of above section.—The general purpose of Rev. Stats., sec. 602, is that the administration of justice by a district court shall not, through a vacancy in the office of a judge, be defeated or unduly impeded; that causes civil and criminal shall, notwithstanding the vacancy, be preserved in their full force and vitality, to be effectively proceeded with when there is a judge authorized to discharge the functions of the court; that all acts or steps calling for or serving as the basis of judicial action, which otherwise should or must be earlier done or taken in court in the progress of a cause, shall or may be done or taken therein after the termination of the vacancy. The section is a remedial statute and should be liberally construed. (*United States v. Murphy*, 82 Fed. Rep. 893.)

“Process.”—A recognizance taken by a United States commissioner for appearance and answer in a criminal cause is “process” within the meaning of above section. (*United States v. Murphy*, 82 Fed. Rep. 893.)

§ 152. Vacancy in office of district judge.—When the office of district judge is vacant in any district in a State containing two or more districts, the judge of the other or of either of the other districts may hold the district court, or the circuit court, in case of the sickness or absence of the other judges thereof, in the district where the vacancy occurs, and discharge all the judicial duties of judge of such district during such vacancy; and

all the acts and proceedings in said courts by or before such judge of an adjoining district shall have the same effect and validity as if done by or before a judge appointed for such district. (Rev. Stats. sec. 603.)

§ 153. Recognizances in New York.—All recognizances and bail bonds taken in criminal cases for an appearance at a circuit court in the southern district of New York, conditioned upon an appearance at the next one of the terms appointed by the Act of February 7, 1873, shall be valid. (Rev. Stats. sec. 659.)

§ 154. Special sessions for trial of criminal causes.—Any circuit court may, at its own discretion, or at the discretion of the supreme court, hold special sessions for the trial of criminal causes. (Rev. Stats. sec. 661.)

Authority.—Authority is given under this section only when the court is in session (*United States v. Williams*, 4 Cranch C. C. 372; Fed. Cas. No. 16712), and it is not necessary for the clerk to give thirty days' notice of the time and place of holding the special session. (*United States v. Williams*, 4 Cranch C. C. 372; Fed. Cas. No. 16712.) When holding the special session, the circuit court may exercise its general jurisdiction over all criminal causes arising within the district at the time of holding the session (*United States v. Williams*, 4 Cranch C. C. 379; Fed. Cas. No. 16712); but no cause can be tried which was pending at the last stated session. (*United States v. Hamilton*, 3 Dall. 17; *United States v. Insurgents*, 3 Dall. 513; *Anonymous*, 4 Cranch C. C. 337; Fed. Cas. No. 9411; *United States v. Milburn*, 4 Cranch C. C. 552;

Fed. Cas. No. 15766; United States v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.) This section authorizes special sessions in cases punishable with death in the county where the crime was committed. (United States v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.)

§ 155. Special sessions for criminal trials.—The supreme court, or when that court is not sitting, any circuit justice or circuit judge, together with the judge of the proper district, may direct special sessions of a circuit court to be held, for the trial of criminal causes, at any convenient place within the district nearer to the place where the offenses are said to be committed than the place appointed by law for the stated sessions. The clerk of such court shall, at least thirty days before the commencement of such special session, cause the time and place for holding it to be notified for at least three weeks consecutively in one or more of the newspapers published nearest to the place where it is to be held. All process, writs, and recognizances respecting juries, witnesses, bail, or otherwise, which relate to the cases to be tried at such special session, shall be considered as belonging to such sessions, in the same manner as if they had been issued or taken in reference thereto. Any such session may be adjourned from time to time to any time previous to the next stated term of the court; and all business depending for trial at any special session shall, at the close thereof, be considered as removed to the next stated term. (Rev. Stats. sec. 662.)

Place of offense.—This section regards the place, while the preceding section regards the time. By this

section a special session may be ordered by the judge out of court. (U. S. v. Williams, 4 Cranch C. C. 372; Fed. Cas. No. 16712.) It vests the court with discretion, and a trial will not be directed in the county where the offense was committed when it cannot be done without inconvenience. (U. S. v. The Insurgents, 3 Dall. 513; U. S. v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.) The order may be made by the judge out of court (U. S. v. Williams, 4 Cranch C. C. 373; Fed. Cas. No. 16712); and the court will have cognizance only of offenses committed in that part of the district nearer to the special than to the ordinary session. (U. S. v. Williams, 4 Cranch C. C. 372; Fed. Cas. No. 16712.) But it may take cognizance of a criminal case arising after the order is made (U. S. v. Williams, 4 Cranch C. C. 372; Fed. Cas. No. 16712), and cases which are pending at the close of the special session will be removed to the stated term. (U. S. v. Williams, 4 Cranch C. C. 372; Fed. Cas. No. 16712.) No case can be heard at the special session where the indictment was found at the regular stated term. (U. S. v. Cornell, 2 Mason, 91; Fed. Cas. No. 14868.)

§ 156. **Adjourned terms, Missouri.**—The circuit court for the several districts of Missouri may at any time order adjourned terms thereof. In the eastern district a copy of the order shall be posted on the door of the court-room, and shall be advertised in some newspaper printed in St. Louis; and in the western district a copy of the order shall be posted on the door of the court-room and advertised in some newspaper printed in the city of Jefferson, at least twenty days before the adjourned term is held. At such adjourned term any busi-

ness may be transacted which might be transacted at a regular term. (Rev. Stats. sec. 633.)

See *Mechanics' Bank v. Withers*, 6 Wheat. 106; *Anon.*, 1 Cranch C. C. 159.

§ 157. **California, Oregon and Nevada, special sessions.**—In the districts of California, Oregon and Nevada the circuit justice or circuit judge may appoint special sessions of the circuit courts, to be held at the places where the regular sessions are held, by an order under his hand and seal directed to the marshal and clerk of such court, at least fifteen days before the time fixed for the commencement of such special sessions. Said order shall be published by the marshal in one or more of the newspapers within the district where such sessions are to be held. (Rev. Stats. sec. 664.)

§ 158. **Kentucky and Indiana, special terms.**—In the districts of Kentucky and Indiana the district judge, and in his absence the circuit justice or circuit judge, may, by a written order to the clerk of the circuit court, appoint a special term of such court; and by said order the judge may prescribe the duties of the officers of the court in summoning juries, and in the performance of other acts necessary for the holding of such special term; or the court may by its order, after it is opened, prescribe the duties of his officers, and the mode of proceeding, and any of the details thereof. Notice of such special term shall be given by the clerk by posting a copy of said order on the front door of the court house where the court is to be held, and

by publishing the same in one or more newspapers in the same place. (Rev. Stats. sec. 665.)

§ 159. **Mississippi, special terms.**—That the judge of the United States courts for said northern district may, by order from time to time, appoint and hold additional special terms of said courts, for the disposal of the unfinished business thereof, whenever the interests of the public and the condition of the docket shall so require; *provided*, that there shall not be more than two such special terms in any one year in each division, nor for a longer period than twelve judicial days for each special term. (22 U. S. Stats. 101.)

§ 160. **Tennessee, special terms.**—In each of the districts of Tennessee the judges of the circuit court may appoint special terms thereof, to be held at the place where the regular terms are held; and notice of such special term shall be published for four consecutive weeks in at least one newspaper printed at the place where the court is to be held. (Rev. Stats. sec. 666.)

§ 161. **North Carolina, special terms.**—In each of the districts of North Carolina the circuit court may order special terms thereof, to be held at such times and places in said district as the court may designate; *provided*, that no special term of the circuit court for either district shall be appointed, except by and with the concurrence and consent of the circuit judge. (Rev. Stats. sec. 667.)

§ 162. **Virginia and Wisconsin, special terms.**—In each of the districts of Virginia and of Wisconsin the circuit court may order special terms, and direct the grand or petty jury, or both, to attend the same, by an order to be entered of record twenty days before the day on which such special term is to convene; *provided*, that no special term of such circuit courts shall be appointed in any of the said districts, except by and with the concurrence and consent of the circuit judge. (Rev. Stats. sec. 668.)

§ 163. **Special terms, general rule.**—In the districts not mentioned in the five preceding sections, the presiding judge of any circuit court may appoint special sessions thereof, to be held at the places where the regular sessions are held. (Rev. Stats. sec. 669.)

§ 164. **Special terms, business transacted at.**—At any special term of a circuit court in any district in Indiana, Kentucky, Missouri, North Carolina, Virginia and Wisconsin, any business may be transacted which might be transacted at any regular term of such court. At any special term of a circuit court in any other district, it shall be competent for the court to entertain jurisdiction of and to hear and decide all cases in equity, cases in error or on appeal, issues of law, motions in arrest of judgment, motion for a new trial, and all other motions, and to award executions and other final process, and to do and transact all other business, and direct all other proceedings, in all causes pend-

ing in the circuit court, except trying any cause by a jury, in the same way and with the same effect as the same might be done at any regular session of said court. (Rev. Stats. sec. 670.)

§ 165. Adjournment in absence of the judges.

—If neither of the judges of a circuit court is present to open any session, the marshal may adjourn the court from day to day until a judge is present; *provided*, that if neither of them attends before the close of the fourth day after the time appointed for the commencement of the session, the marshal may adjourn the court to the next regular term. (Rev. Stats. sec. 671.)

§ 166. Adjournment in absence of the judges, by written order.—If neither of the judges of a circuit court be present to open and adjourn any regular or adjourned or special session, either of them may, by a written order, directed alternatively to the marshal, and in his absence to the clerk, adjourn the court from time to time, as the case may require, to any time before the next regular term. (Rev. Stats. sec. 672.)

CHAPTER X.

CIRCUIT COURT OF APPEALS.

- § 167. Circuit Court of Appeals—Creation—Powers.
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- § 186. Appeals, etc., from Indian Territory court.
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- § 188. Jurisdiction in cases from territorial supreme courts.

§ 167. Circuit court of appeals—Creation—Powers.—There is hereby created in each circuit a Circuit Court of Appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction, as is hereafter limited and established. Such court shall prescribe the form and style of its seal, and the form of writs, and other process and procedure as may be conformable to the exercise of its jurisdiction as shall be conferred by law. (26 U. S. Stats. 826, sec. 2, part of cl. 1.)

Creation of circuit court of appeals.—Circuit courts of appeals were established to facilitate the prompt disposition of cases in the supreme court, and to relieve it from the oppressive burden of general litigation, which impeded the examination of cases of public concern, and operated to the delay of suitors. (In re Woods, 143 U. S. 202; *Law Ow Bew v. United States*, 144 U. S. 55) and the act creating such courts took effect immediately, so as to permit appeals to be taken to them at once. (In re Claasen, 140 U. S. 209; *McLish v. Roff*, 141 U. S. 661; *Railroad Co. v. Bennett*, 49 Fed. Rep. 598; 1 C. C. A. 392; *Baltimore etc. R. Co. v. Andrews*, 50 Fed. Rep. 728; 1 C. C. A. 636.)

§ 167 a. Clerk of circuit court of appeals.—The court shall also appoint a clerk, who shall perform and exercise the same duties and powers in

regard to all matters within its jurisdiction as are now exercised and performed by the clerk of the supreme court of the United States, so far as the same may be applicable. The salary of the clerk of the court shall be three thousand dollars a year, to be paid in equal portions quarterly. (26 U. S. Stats. 826, sec. 2, cl. 1.)

Clerk of circuit court of appeals.—The clerk of the circuit court does not vacate his office within the meaning of act of June 20, 1874, sec. 2, by merely accepting the position of clerk of the circuit court of appeals for the same circuit. (*United States v. Harsha*, 16 U. S. App. 13; 56 Fed. Rep. 953.) Revised Statutes, section 1763, does not prohibit a person receiving three thousand dollars per annum as clerk of a circuit court of appeals from receiving further compensation as clerk of a circuit court when he lawfully holds both offices. (*United States v. Harsha*, 16 U. S. App. 13; 56 Fed. Rep. 953.) A clerk of the circuit court of appeals is entitled to retain from the fees and emoluments of his office, after payment of all other expenses, a sum not exceeding five hundred dollars, in addition to his salary of three thousand dollars. (*Morton v. United States*, 59 Fed. Rep. 349; *United States v. Morton*, 24 U. S. App. 31; 65 Fed. Rep. 204.)

§ 167 b. Marshal of circuit court of appeals.—So much of section 2 of the act approved March 3, 1891, to establish circuit courts of appeals, as authorizes the appointment of a marshal to each of said courts, at a salary of two thousand five hundred dollars, be and the same is hereby repealed, and the duties and powers imposed upon said marshals under the said act shall be per-

formed by the United States marshals in and for the districts where terms of said courts may be held, and to this end said marshals shall be the marshals of said circuit court of appeals. (26 U. S. Stats. 826, sec. 2, cl. 1; as amended, 27 U. S. Stats. 222.)

§ 168. **Costs and fees of circuit court of appeals.**—The costs and fees in each circuit court of appeals shall be fixed and established by said court in a table of fees to be adopted within three months after the passage of this act. *Provided*, that the costs and fees so fixed by any court of appeals shall not with respect to any item exceed the costs and fees now charged in the supreme court; and the same shall be expended, accounted for, and paid over to the treasury department of the United States in the same manner as is provided in respect to the costs and fees in the supreme court. Each circuit court of appeals shall, within three months after the fixing and establishing costs and fees as aforesaid, transmit such table to the chief justice of the United States, and within one year thereof the supreme court of the United States shall revise said table, making the same, so far as may seem just and reasonable, uniform throughout the United States. The table of fees, when so revised, shall thereupon be in force in each circuit. (26 U. S. Stats. 826, sec. 2, cl. 1, as amended February, 1897; 29 U. S. Stats. 536.)

Costs and fees—Circuit court of appeals.—Ordered in pursuance of the act of Congress of February 19, 1897 (29 Stat. at L. 536. chap. 263), that the follow-

ing table of fees and costs in the circuit court of appeals be, and the same is hereby established, to take effect on the first day of March, A. D. 1898, and no other fees and costs than those therein named shall thereafter be charged:

Docketing a case and filing the record.....	\$ 5.00
Entering an appearance.....	.25
Transferring a case to the printed calendar.....	1.00
Entering a continuance.....	.25
Filing a motion, order or other paper.....	.25
Entering any rule or making or copying any record or other paper, for each one hundred words.....	.20
Entering a judgment or decree.....	1.00
Every search of the records of the court and certifying the same.....	1.00
Affixing a certificate and a seal to any paper...	1.00
Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid.	
Preparing the record for the printer, indexing the same, supervising the printing, and distributing the copies, for each printed page of the record and index.....	.25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing).....	.20
Issuing a writ of error and accompanying papers or a mandate or other process.....	5.00
Filing briefs, for each party appearing.....	5.00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed \$5.00 in the whole for any copy).....	1.00
Attorney's docket fee.....	20.00

(January 10, 1898; 168 U. S. 720; amended February 28, 1898; 169 U. S. 740.)

Where a large mass of irrelevant matter is introduced into the case and carried into the record on appeal by a party, he will be obliged to pay the costs caused by the irrelevant evidence, even though he be successful. (*Ecaubert v. Appleton*, 35 U. S. App. 271; 67 Fed. Rep. 917; *United States Sugar Ref. v. Providence S. & G. Co.*, 18 U. S. App. 603; 62 Fed. Rep. 375.) An attorney's docket fee of twenty dollars is taxable against plaintiff in error on affirmance of a judgment. (*Shillito v. McClung*, 31 U. S. App. 70; 66 Fed. Rep. 22; *Kansas City, Ft. S. & M. R. Co. v. McDonald*, 19 U. S. App. 653; 60 Fed. Rep. 522.) Where the appeal has substantially prevailed, as where the decree is reversed as to the most important part, the appellant is entitled to the statutory costs. (*Northern Trust Co. v. Snyder*, 46 U. S. App. 587; 77 Fed. Rep. 818.) Where the responsibility for the introduction of irrelevant matter cannot be fixed, the costs of the same will be taxed equally to the parties. (*The Sarah*, 2 U. S. App. 39; 52 Fed. Rep. 233.)

§ 169. **Rules, etc.**—The court shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law. (26 U. S. Stats. 827, sec. 2, cl. 2.)

§ 170. **Judges constituting court.**—The chief justice and the associate justices of the supreme court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals with their respective circuits in the manner hereinafter provided. In case the chief justice or an associate

justice of the supreme court should attend at any session of the circuit court of appeals, he shall preside, and the circuit judges in attendance upon the court in the absence of the chief justice or associate justice of the supreme court shall preside in the order of the seniority of their respective commissions. (26 U. S. Stats. 827, sec. 3, cl. 1.)

§ 171. District judges—When may serve in district court—**Proviso.**—In case the full court at any time shall not be made up by the attendance of the chief justice or an associate justice of the supreme court and circuit judges, one or more district judges within the circuit shall be competent to sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court; *provided*, that no justice or judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals. (26 U. S. Stats. 827, sec. 3, cl. 2.)

§ 172. Terms — Regular — Additional — First term.—A term shall be held annually by the circuit court of the first circuit, in the city of Boston; in the second circuit, in the city of New York; in the third circuit, in the city of Philadelphia; in the fourth circuit, in the city of Richmond; in the fifth circuit, in the city of New Orleans; in the sixth circuit, in the city of Cincinnati; in the seventh circuit, in the city of Chicago; in the eighth

circuit in the city of Saint Louis; in the ninth circuit, in the city of San Francisco; and in such other places in each of the above circuits as said court may from time to time designate. The first term of said courts shall be held on the second Monday in January, eighteen hundred and ninety-one, and thereafter at such times as may be fixed by said courts. (26 U. S. Stats. 827, sec. 3, cl. 2.)

§ 173.* **Change of date.**—The first meetings of the several circuit courts of appeals mentioned in the act of Congress passed at this present session, entitled “An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,” shall be held on the third Tuesday in June, A. D. eighteen hundred and ninety-one; and if, from any casualty, the first meeting of any such court shall fail to be so held on that day, the first meeting of any such court, so failing to be held, shall be held on such day subsequent thereto as the chief justice, or any justice of the supreme court of the United States assigned to such circuit, shall direct: And be it further resolved, that nothing in said act shall be held or construed in anywise to impair the jurisdiction of the supreme court or any circuit court of the United States in any case now pending before it, or in respect of any case wherein the writ of error or the appeal shall have been sued out or taken to any of said courts before the first day of July, *anno Domini* eighteen hundred and ninety-one.

* Joint resolution passed March 3, 1891; 26 U. S. Stats. 1115.

See *Gulf C. & S. F. R. R. Co. v. Shane*, 157 U. S. 348.

§ 174. Appeals to and from circuit courts.—No appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error, or otherwise, from said district courts shall only be subject to review in the supreme court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the supreme court of the United States or in the circuit courts of appeals hereby established according to the provisions of this act regulating the same. (26 U. S. Stats. 827, sec. 4.)

A writ of error returnable to the circuit court of appeals may be issued from the clerk's office of the circuit court in which the action was tried. (*Northern Pac. R. Co. v. Amato*, 49 Fed. Rep. 881.)

§ 175. Appeals from circuit or district to supreme court.—That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the supreme court in the following cases: In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to

the supreme court from the court below for decision. From the final sentences and decrees in prize causes. In cases of conviction of a capital crime. In any case that involves the construction or application of the constitution of the United States. In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question. In any case in which the constitution or law of a State is claimed to be in contravention of the constitution of the United States (26 U. S. 827, sec. 5; as amended 29 U. S. Stats. 492.)

Appeals directly to supreme court.—In the cases enumerated in the statute, appeals may be taken directly to the supreme court from the circuit or district court, but cannot be taken in other cases except such as were mentioned in the joint resolution of March 3, 1891. (*Mason v. Pewabic Min. Co.*, 153 U. S. 361; *Ogden v. United States*, 148 U. S. 390.) The right of appeal directly to the supreme court is an absolute right, and the circuit courts have no authority to allow or disallow such an appeal. (*Pullman's Palace Car Co. v. Cent. Transp. Co.*, 71 Fed. Rep. 809.) A writ of error from the supreme court to the circuit court does not reach the proceedings in the circuit court of appeals, refusing to allow the cause to be docketed and the record to be filed therein on the ground that the cause should be taken directly to the supreme court. (*Lutcher v. United States*, 157 U. S. 427.) The circuit court has no authority to grant an appeal to the supreme court of the United States without requiring bond for costs. (*In re Newman*, 79 Fed. Rep. 615.) Where the supreme court decides that the circuit court has juris-

diction of a cause and remands the same for the taking of an account, the circuit court of appeals cannot, on a subsequent appeal, reopen the question of jurisdiction. (*Nashua & L. R. Corp. v. Boston & L. R. Corp.*, 5 U. S. App. 97; 51 Fed. Rep. 929.)

(1) When the jurisdiction of court is in issue.—The jurisdiction of the court is not drawn in question by the denial of the right of plaintiff to the judgment entered in its favor, nor in the authority of the court to enter the judgment put in question, and therefore an appeal cannot be taken from the circuit court to the supreme court. (*Woodbridge & Turner Eng. Co. v. Ritter*, 70 Fed. Rep. 679.) When a final judgment or decision has been rendered in a district or circuit court, involving both questions of jurisdiction and other questions, the party against whom it is rendered may elect to take his writ of error to the supreme court upon the question of jurisdiction alone, or to the circuit court of appeals on the whole case. When he chooses the latter, the circuit court of appeals has jurisdiction to determine the question of the jurisdiction of the court below, as well as all other questions in the case. (*Rust v. United Waterworks Co.*, 36 U. S. App. 167; 70 Fed. Rep. 129; *Baltimore & Ohio Ry. Co. v. Meyers*, 10 U. S. App. 485; 62 Fed. Rep. 367; *American Sugar Ref. Co. v. Johnson*, 13 U. S. App. 681; 60 Fed. Rep. 503; *Texas & P. R. Co. v. Bloom*, 23 U. S. App. 143; 60 Fed. Rep. 979; *King v. McLean Asylum*, 21 U. S. App. 407; 64 Fed. Rep. 325; *United States v. Jahn*, 155 U. S. 109; *Robinson v. Caldwell*, 105 U. S. 359.) And if an appeal is taken to the circuit court of appeals and the whole case has been determined on its merits, an appeal cannot then be taken to the supreme court direct from the circuit court on the question of jurisdiction; such case can be taken to

the supreme court only upon certiorari after final decree upon the merits in the circuit court of appeals. (*Robinson v. Caldwell*, 165 U. S. 359.) The supreme court alone has power to review cases in which the only question on appeal is the jurisdiction of the court below. (*United States v. Severens*, 37 U. S. App. 622; 71 Fed. Rep. 768; *Cabot v. McMaster*, 24 U. S. App. 571; 65 Fed. Rep. 533; *United States v. Jahn*, 155 U. S. 109.) The determination of the question of jurisdiction by the supreme court cannot be had until after final decree in the circuit court. (*Gates v. Bucki*, 12 U. S. App. 69; 53 Fed. Rep. 967.) A question whether jurisdiction has been acquired by proper service of process is sufficient to carry the appeal to the supreme court. (*Shepard v. Adams*, 168 U. S. 618.) The question of jurisdiction is not sufficiently specific to be certified where it was not raised in the circuit court, and no hint is given as to what objection exists. (*McHenry v. Alford*, 168 U. S. 651.) An assignment of errors in the United States district court after the term at which the decree was entered, directed by that court to be filed *nunc pro tunc*, and filed as of that term is not a sufficient certificate to the supreme court of the question of the jurisdiction of that court. (*The Bayonne*, 159 U. S. 687.) The allowance of an appeal cannot be treated as a certificate, although want of jurisdiction was the ground of appeal, where the prayer for appeal specifies no ground of jurisdiction, but asks that the whole record be sent up. (*The Bayonne*, 159 U. S. 687.) When the jurisdiction of the circuit court was in issue, a certificate of such question of jurisdiction to the supreme court for decision is necessary or the case is not properly in the court. (*Ansbro v. United States*, 159 U. S. 695; *Davis & Rankin Bldg. & Mfg. Co. v. Barber*, 157 U. S. 673; *Colvin v. Jacksonville*, 157 U. S. 368; *Moran v. Hagerman*, 151 U. S. 329; *Maynard v. Hecht*,

151 U. S. 324; *Van Wagenen v. Sewall*, 160 U. S. 369; *Chappell v. United States*, 160 U. S. 499.) The absence of such certificate cannot be helped out by a resort to the petition for writ of error nor to the assignment of error. (*Maynard v. Hecht*, 151 U. S. 324.) The question of jurisdiction is sufficiently certified where the judgment and bill of exceptions recite that the cause was dismissed for want of jurisdiction; and the district judge in the order allowing the writ of error certified in effect that it was allowed upon the question of jurisdiction. (*In re Lehigh Min. & Mfg. Co.*, 156 U. S. 322.) A plea which was not a plea to the jurisdiction but a plea in bar which did not seek to oust the jurisdiction of that court does not present a question of jurisdiction which the supreme court can review. (*Texas & Pac. Ry. Co. v. Saunders*, 151 U. S. 105.) The question of jurisdiction must have been in issue in the circuit court and decided against the party seeking to bring it before the supreme court for determination. (*Maynard v. Hecht*, 151 U. S. 324.) It is a sufficient certification to the supreme court of the question of jurisdiction of the circuit court that the petition of appeal is upon that sole ground and that the court in allowing the appeal states that the appeal is granted "solely upon the question of jurisdiction," and directs the portions of the record to be certified to the supreme court to present that question. (*Shields v. Coleman*, 157 U. S. 168; *Smith v. McKay*, 161 U. S. 355.) Where the record shows that the only matter tried and decided was a demurrer to the plea to the jurisdiction, and the petition on which the writ of error was allowed asks for a review of the judgment that the circuit court has no jurisdiction, the question is sufficiently certified. (*Interior Construction & Impr. Co. v. Gebney*, 160 U. S. 217.) In the absence of any certificate of the question of the jurisdiction of the circuit court,

its order entered November 28, 1891, dismissing a case for lack of jurisdiction is not subject to review on writ of error from the supreme court. (*Davis v. Geissler*, 162 U. S. 290.) Where the jurisdiction of the lower court is in issue and the case is certified for decision, the certificate must be granted during the term at which the judgment or decree is rendered. (*Colvin v. City of Jacksonville*, 158 U. S. 456.) A party whose suit has been dismissed by the United States circuit court for want of jurisdiction has the right to have such judgment reviewed by the supreme court. (*Wetmore v. Rymer*, 169 U. S. 115.) Where the question is as to the jurisdiction of the court in equity based on the alleged existence of a complete remedy at law, the question cannot be certified to the supreme court; for the question in such case is not to the want of power but to the want of equity. (*Smith v. McKay*, 161 U. S. 355.) The statute does not authorize a direct appeal to the supreme court on a question involving the jurisdiction of the circuit court over another suit previously determined in the same court. (*Carey v. Houston & T. C. R. Co.*, 150 U. S. 170; *Ex parte Lennon*, 150 U. S. 393.) The only question that can be considered in the supreme court when the question of the jurisdiction of the trial court is certified is that of its jurisdiction. (*Schunk v. Moline M. & S. Co.*, 147 U. S. 500; *In re Lehigh M. & M. Co.*, 156 U. S. 322; *Greely v. Lowe*, 155 U. S. 58; *Maynard v. Hecht*, 151 U. S. 324; *Mexican Cent. Ry. Co. v. Pinkney*, 149 U. S. 194.)

(2) **In case of conviction of capital crime.**—In the original act creating the circuit court of appeals (26 U. S. Stats. 827), the supreme court had jurisdiction of cases brought directly from the circuit and district courts, where the cases involved a conviction of a capital or other infamous crime. This provision was

subsequently amended so as to withdraw from the supreme court jurisdiction over infamous crimes not capital and to confer it upon the circuit courts of appeals. (29 U. S. Stats. 492.) At present, therefore, appeals may be taken directly to the supreme court only in such criminal cases as are capital. (Id.) Appeals from habeas corpus proceedings can no longer be taken directly to the supreme court in criminal cases, except in the cases mentioned in section 5 of the act of 1891. (Cross v. Burke, 146 U. S. 82; In re Lennon, 150 U. S. 393.) The final judgment of a court in case of conviction of capital or otherwise infamous crime, is reviewable only upon writ of error, and not by appeal. (Bucklin v. United States, 159 U. S. 680.)

(3) **When federal question is involved.**—When an appeal is taken to the supreme court direct on the ground that a federal question is involved, and an appeal is also taken to the circuit court of appeals, the latter court will stay its hand until the appeal in the supreme court is disposed of. (Pullman's Palace Car Co. v. Central Trans. Co., 83 Fed. Rep. 1.) A party in the circuit court may resort to the supreme court for a determination of a constitutional question, and while such appeal is pending, may appeal to the circuit court of appeals upon the other questions involved. (Pullman's Palace Car Co. v. Central T. Co., 39 U. S. App. 307; 76 Fed. Rep. 401.) An appeal from a decision of a circuit court involving a question of the United States constitutionality of a State statute is within the jurisdiction of the supreme court. (Hastings v. Ames, 32 U. S. App. 485; 68 Fed. Rep. 726.) Where the only question arising in the circuit court under a treaty was as to whether the petitioner was seeking an asylum in the United States, and no question as to the construction or validity of

the treaty was involved, an appeal directly to the supreme court was not permissible. (In re Newman, 79 Fed. Rep. 615.) When no construction or application of the constitution was either expressed or asked in the circuit court, a case cannot be carried directly to the supreme court of the United States from the circuit court. (Cornell v. Green, 163 U. S. 75.) In a case before the supreme court on the ground that a constitutional question is involved, it has jurisdiction of the entire case and of all questions involved in it. (Scott v. Donald, 165 U. S. 58; Chappell v. United States, 160 U. S. 499; Horner v. United States, 143 U. S. 570; Holder v. Aullman, 169 U. S. 81.) The supreme court does not gain jurisdiction because the circuit court directed the jury to find for defendant, and because it is claimed plaintiff is thereby deprived of the right of trial by jury. (Trest Mfg. Co. v. Standard Steel & Iron Co., 157 U. S. 674.) An appeal lies directly to the supreme court from the final decision of a circuit court upon habeas corpus in case of any person alleged to be restrained of his liberty in violation of the constitution of the United States. (McKane v. Durston, 153 U. S. 684.) Where the construction of a treaty between the United States and Mexico is drawn in question in a final order of the district court discharging persons from custody in extradition proceedings, an appeal may be taken directly to the supreme court. (Ornelas v. Ruiz, 161 U. S. 502.) Where a case involves the constitutionality of a law of the United States, it is within the appellate jurisdiction of the supreme court. (Horner v. United States, 143 U. S. 570.) The constitutional question need not have been upheld or denied in the court in order to give the supreme court jurisdiction. (Holder v. Aultman, 169 U. S. 81.) The fact that the claim that the State law violates the constitution of the United States is not well founded, does not de-

prive the supreme court of jurisdiction. (Penn Mutual Life Ins. Co. v. Austin, 168 U. S. 685.) The claim that a city ordinance violates the constitution is as good for jurisdictional purposes as the claim that a State statute so violates it. (Penn Mutual L. Ins. Co. v. City of Austin, 168 U. S. 685.) The jurisdiction of the court of appeals attaches upon the filing of the writ of error in the office of the clerk of the circuit, and is not defeated by irregularity in the transcript or in its certification. (Burnham v. North Chicago St. Ry. Co., 87 Fed. Rep. 168.) An appeal and supersedeas do not oust the jurisdiction of the lower court or preclude collateral or independent proceedings. (Fidelity Trust & Safety Vault Co. v. Mobile St. Ry. Co., 54 Fed. Rep. 26.) The circuit court of appeals has no jurisdiction to review a judgment rendered before the act creating that court was passed, where the amount claimed was too small to give jurisdiction to the supreme court. (United States v. National Exch. Bank, 9 U. S. App. 145; 53 Fed. Rep. 9.) In an admiralty case the decree of a circuit court on appeal was reviewable in the circuit courts of appeals, where the appeal to the circuit court was taken prior to July 1, 1891. (The Mattano, 8 U. S. App. 111; 52 Fed. Rep. 876.)

§ 176. Appeals from state courts.—Nothing in this act shall affect the jurisdiction of the supreme court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases. (Sec. 5.)

§ 177. Jurisdiction—Judgments final—Certification of questions.—The circuit courts of appeals established by this act shall exercise appellate jurisdiction to review, by appeal or by writ of error,

final decisions in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the supreme court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the supreme court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal. (20 U. S. Stats. 828, sec. 6, cl. 1.)

"By writ of error or appeal."—A writ of error brings up matters of law only; an appeal, unless expressly restricted, brings up both law and fact. (*Dower v. Richards*, 151 U. S. 658.) Judgments of the United States circuit court in actions at law are re-

viewable by writ of error only. (*Dower v. Richards*, 151 U. S. 658; *Nelson v. Huidekoper*, 30 U. S. App. 88; 66 Fed. Rep. 616; *Muhlenberg Co. v. Dyer*, 31 U. S. App. 109; 65 Fed. Rep. 634; *Stevens v. Clark*, 18 U. S. App. 584; 62 Fed. Rep. 321.) The proper method of reviewing a judgment in an action at law is by writ of error, with citation to adverse parties. (*Nelson v. Huidekoper*, 30 U. S. App. 88; 66 Fed. Rep. 616.) An application for a writ of mandamus is reviewable only by a writ of error, not by appeal. (*Muhlenberg Co. v. Dyer*, 31 U. S. App. 109; 65 Fed. Rep. 634.) The writ of habeas corpus does not perform the office of a writ of error or an appeal in respect to the proceedings complained of, if in such proceedings the court had jurisdiction of the subject matter and the person. (*Ex parte Lennon*, 22 U. S. App. 561; 64 Fed. Rep. 320.) An order imposing a fine for contempt for violation of an injunction is to be regarded as a judgment in a criminal case, and is reviewable upon a writ of error and not by appeal. (*Gould v. Sessions*, 35 U. S. App. 281; 67 Fed. Rep. 163; 26 U. S. App. 358, 368; 63 Fed. Rep. 1001.) An action brought against the United States by a supervisor of elections to recover items disallowed by the treasury department is an action at law and is reviewable only on a writ of error, and not by appeal. (*United States v. Tinsley*, 25 U. S. App. 266; 73 Fed. Rep. 369.) Judgments of the circuit courts in suits against the United States, under the act of March 3, 1887, are reviewable either by writ of error or appeal. (U. S. v. *Ady*, 40 U. S. App. 312; 76 Fed. Rep. 359.) A petition filed in the United States circuit court by a clerk to recover fees is an action at law, and the judgment can only be reviewed by writ of error. (*United States v. Fletcher*, 8 U. S. App. 481; 60 Fed. Rep. 53.) A proceeding upon habeas corpus is properly removed from the circuit court of appeals by appeal, and not

by writ of error. (*King v. McLean Asylum*, 21 U. S. App. 481; 64 Fed. Rep. 331.)

"Final decisions."—The appellate jurisdiction of the circuit courts of appeals is restricted to the review of final judgments and decrees, excepting interlocutory orders relating to injunctions. (*Robinson v. Belt*, 12 U. S. App. 431; 56 Fed. Rep. 328.) A decree of a Federal court is final for the purposes of an appeal, when it ends the litigation on the merits, so that if affirmed, nothing would be left to the trial court but to execute it. (*Talley v. Curtain*, 8 U. S. App. 424; 58 Fed. Rep. 4.) The circuit court of appeals cannot give finality to a decree of the circuit court which was not final when entered of record in the circuit court. (*Standard Elevator Co. v. Crane El. Co.*, 46 U. S. App. 411; 76 Fed. Rep. 767.) One portion of a decree may be final, and for that reason appealable, while the remainder may be interlocutory, and not appealable. (*Standard Elevator Co. v. Crane El. Co.*, 46 U. S. App. 411; 76 Fed. Rep. 767.) A decree may be a final appealable decree, although if no appeal be taken a rehearing or bill of review would be available remedies in the court of original jurisdiction. (*Standard Elevator Co. v. Crane El. Co.*, 46 U. S. App. 411; 76 Fed. Rep. 767.) A decree of the circuit court setting aside the subpoena and dismissing the bill of complaint as against one of the defendants because of lack of jurisdiction over the person of such defendant, is not a final decree. (*Hohorst v. Hamburg-American Packet Co.*, 148 U. S. 262.) A decree dissolving a partnership, "enjoining until the final decree in this suit" both parties from disposing of the partnership property, and directing the taking of testimony, is not a final appealable decree. (*Ries v. Henderson*, 42 U. S. App. 760; 78 Fed. Rep. 515.) Neither is an order of the circuit court denying the petition of nonresident creditors of an insolvent for-

eign corporation to be made formal parties. (Jones v. Sands, 51 U. S. App. 153; 79 Fed. Rep. 913.) An order dismissing two or three sued on a joint obligation, because not served with process, is not a final order from which an appeal lies. (Beck & Pauli Lith. Co. v. Wacker & B. B. & M. Co., 46 U. S. App. 486; 76 Fed. Rep. 10.) A decree made after a final hearing on the merits, declaring infringement of a trademark, awarding a perpetual injunction and referring the cause to a master for an accounting, is not a final decree. (Raymond v. Royal Baking Powder, 46 U. S. App. 494; 76 Fed. Rep. 465.) The question of the allowance or refusal of amendments to pleadings is one resting in the discretion of the trial court, and is not appealable. (Phillip Schneider Brew. Co. v. American Ice M. Co., 40 U. S. App. 382; 77 Fed. Rep. 138.) An order allowing the amendment of a bill of exceptions after the end of the term, and after the date fixed for settling the same, is not a final decision. (Honey v. Chicago, B. & O. R. R. Co., 49 U. S. App. 625; 82 Fed. Rep. 773.) Neither is an order final which grants certain relief upon the party's complying with conditions specified in the order (Stratton v. Dewey, 41 U. S. App. 741; 79 Fed. Rep. 32); nor an order reviving a suit in the name of complainant's administrator (Mackaye v. Mallory, 45 U. S. App. 741; 79 Fed. Rep. 1); nor an order upon an intervening petition upon a claim presented against an insolvent estate, which order refers such claim to a master. (Security Trust Co. v. Sullivan, 46 U. S. App. 601; 77 Fed. Rep. 778.) A decree awarding a perpetual injunction in a patent suit, but with an order of reference to a master to ascertain the damages suffered by infringement is not a final decree. (Brush Electric Co. v. Western El. Co., 46 U. S. App. 355; 76 Fed. Rep. 762.) A decree entered on a full hearing on the merits sustaining a patent, declaring an infringe-

ment awarding a perpetual injunction and referring the matter to a master to ascertain profits is not a final decree. (*Lockwood v. Wickes*, 36 U. S. App. 321; 75 Fed. Rep. 118.) An order appointing commissioners to assess damages for the taking and condemnation of land is not a final judgment. (*Luxton v. North River Bridge Co.*, 147 U. S. 337.) An order denying leave to intervene in a cause is in no sense a final judgment, and is not appealable. (*Lewis v. Baltimore & L. R. Co.*, 8 U. S. App. 645; 62 Fed. Rep. 218.) The dismissal of a petition for removal on the ground of local prejudice is not a final judgment. (*Patten v. Cilley*, 62 Fed. Rep. 497.) A decree removing the liquidators of a corporation because they had interests adverse thereto is not a final decree. (*Dufour v. Lang*, 2 U. S. App. 477; 54 Fed. Rep. 913.) An order quashing an attachment and leaving the action still pending in the trial court is not a final decision (*Hamner v. Scott*, 19 U. S. App. 639; 60 Fed. Rep. 343); neither is an order discharging a previous order to the marshal to seize and hold property in a suit to enforce an equitable chattel mortgage. (*Riddle v. Hudgins*, 19 U. S. App. 144; 58 Fed. Rep. 490.) An order overruling a demurrer to an interplea whereby a third person claims certain goods seized in attachment, is not a final judgment. (*Robinson v. Belt*, 12 U. S. App. 431; 56 Fed. Rep. 329.) An order setting aside a final decree at the succeeding term was held not a final decision. (*Fisher v. Simon*, 32 U. S. App. 132; 67 Fed. Rep. 387.) A decree which declares certain claims of a patent valid and infringed, but holds others invalid, and that others still are not infringed is not a final decree in respect to the claims found invalid or not infringed so as to give plaintiff a right to appeal before the case is finally disposed of after the accounting. (*Marden v. Campbell Printing Press & Mfg. Co.*, 33 U. S. App. 123; 67 Fed. Rep. 810.)

An order made for the purpose of executing a decree after an appeal from such decree has been perfected, but reserving final action until a commissioner should report his proceedings to the court is not reviewable. (*Gunn v. Black*, 19 U. S. App. 489; 60 Fed. Rep. 159.) Neither is a decree determining the right of a complainant to an account, and settling the principles on which an account should be taken. (*Pittsburgh C. & St. L. Ry. Co. v. Baltimore & O. Ry. Co.*, 22 U. S. App. 359; 61 Fed. Rep. 705.) A judgment is not final while a motion for a new trial is pending. (*Kingman & Co. v. Western Mfg. Co.*, 170 U. S. 675.) A decree to be final for the purposes of appeal must leave the case in such a condition that if there be an affirmance the lower court would have nothing to do but execute the decree already entered. (*National Bank v. Smith*, 156 U. S. 330.) A decree which substantially and completely determines the rights of the parties is appealable, though the main suit has not reached a final decree. (*Central Trust Co. v. Madden*, 25 U. S. App. 430; 70 Fed. Rep. 451; *Kleever v. Seawell*, 22 U. S. App. 458; 65 Fed. Rep. 373.) An order of the circuit court discharging from imprisonment a defendant held under execution against his person upon a judgment in a civil action is final and appealable. (*Stroheim v. Deimel*, 46 U. S. App. 639; 77 Fed. Rep. 802.) A decree in admiralty awarding libelants a definite sum, adjudging that a maritime lien exists therefor, and directing the sale of the vessel and payment of the proceeds into the registry to await the further order of the court is a final appealable decree. (*The Eugene*, 87 Fed. Rep. 1001.) A judgment of nonsuit is subject to review. (*Koons v. Bryson*, 25 U. S. App. 368; 69 Fed. Rep. 297.) A judgment which denies the petition of a receiver of a corporation to have a judgment opened is a final judgment. (*Rust v. United Waterworks Co.*, 36 U. S. App.

167; 70 Fed. Rep. 129.) So is an order overruling a motion by the owner of a patent to be dismissed from a suit brought by the licensee, on the ground that the suit had been brought without the owner's authority. (*Brush Electric Co. v. Electric Imp. Co.*, 7 U. S. App. 208; 51 Fed. Rep. 557.) A decree of confirmation of a sale of property by a receiver was final and appealable where it finally disposed of the possession and ownership of the property. (*City of New Orleans v. Peake*, 2 U. S. App. 403; 52 Fed. Rep. 74.) So a decree will be considered as final where it shows that the court adjudicated all the merits of the case, leaving nothing to be further disposed of, except to carry it into effect, though by inadvertence no time was prescribed within which certain conveyances therein directed were to be executed. (*Devergers v. Parsons*, 23 U. S. App. 239; 60 Fed. Rep. 143.) Likewise a decree for specific performance, concluding all the rights of the parties, notwithstanding a conveyance which it directs to be made is to be afterward presented to the judges for their approval of its form and terms. (*Long v. Maxwell*, 8 U. S. App. 484; 59 Fed. Rep. 948.) A decree allowing \$5,000 to complainant's solicitors for services and directing payment of same out of funds in a receiver's hands, in a suit by a stockholder against a corporation, is pro tanto a final decree. (*Jacksonville etc. Ry. Co. v. American Const. Co.*, 13 U. S. App. 377; 57 Fed. Rep. 66.) Orders finally dismissing interpleaders from the suit, also dismissing an auxiliary petition brought by plaintiff to enjoin them from enforcing a judgment, and vacating an injunction previously granted thereunder, embody final decisions as to such interpleaders. (*Standley v. Roberts*, 19 U. S. App. 407; 59 Fed. Rep. 836.) A decree ordering the dismissal of a libel, if not amended within ten days, is final for the purpose of an appeal within that time by libellant.

(United States v. Three Friends, 166 U. S. 1.) A decree may be final in part, and therefore appealable, although the remainder is not appealable. (The Alert, 26 U. S. App. 63; 61 Fed. Rep. 113.) An order signed by the judge, and entered by the clerk finally dismissing defendants, and directing costs to be taxed, is final. (Prescott etc. Ry. Co. v. Atchison T. Co., 51 U. S. App. 599; 84 Fed. Rep. 213.) The circuit court of appeals has jurisdiction of an appeal from a final decision of a district judge at chambers in a habeas corpus case, as well as from a final decision of a district court. (Webb v. York, 40 U. S. App. 114; 74 Fed. Rep. 753.) A final decree is suspended by a motion for rehearing, and does not take effect and become operative for the purposes of an appeal until such motion is overruled. (Andrews v. Thum, 33 U. S. App. 430; 72 Fed. Rep. 290.)

Appeals from discretionary orders.—The right of review in the appellate courts of the United States is limited to questions of law appearing on the face of the record and does not extend to matters of discretion (Duncan v. Atchison T. & S. F. Ry. Co., 44 U. S. App. 427; 72 Fed. Rep. 808; Dietz v. Lymer, 27 U. S. App. 415; 61 Fed. Rep. 792; Seymour v. Malcolm McDonald Lumber Co., 16 U. S. App. 245; 58 Fed. Rep. 957; Pittsburg Wire Co. v. Roberts, 39 U. S. App. 44; 71 Fed. Rep. 706; The Florence, 38 U. S. App. 32; 71 Fed. Rep. 527; Southern Pac. Co. v. Earl, 48 U. S. App. 716; 82 Fed. Rep. 690; Farmer's Loan & T. Co. v. McClure, 49 U. S. App. 43; 78 Fed. Rep. 209; Goldsby v. United States, 160 U. S. 343; Isaacs v. United States, 159 U. S. 487; Drexel v. True, 36 U. S. App. 611; 74 Fed. Rep. 12). An appeal will not lie in a contempt proceeding instituted for the protection of the property of a receiver (King v. Wooten, 2 U. S. App. 651; 54 Fed. Rep. 612).

There may be an appeal from an award of costs when the force of a statute or some positive rule of law is involved, though it concerns only costs (*The City of Augusta*, 80 Fed. Rep. 297). An award of costs within the discretion of the court below will not be reviewed on appeal, except in case of grave and manifest abuse (*Clarke v. Richmond & W. P. I. Ry. Co.*, 23 U. S. App. 597; 62 Fed. Rep. 328; *Blanks v. Klein*, 41 U. S. App. 621; 78 Fed. Rep. 395; *Tyler Min. Co. v. Sweeney*, 79 Fed. Rep. 277). A refusal to allow an amendment of the complaint is within the discretion of the trial court and will not be reviewed (*Watts v. Weston*, 26 U. S. App. 21; 62 Fed. Rep. 136). A motion for a continuance is not reviewable by the circuit court of appeals (*Richmond Railway & Elec. Co. v. Dick*, 8 U. S. App. 99; 52 Fed. Rep. 379; *Davis v. Patrick*, 12 U. S. App. 629; 57 Fed. Rep. 909).

Order granting or refusing new trial not reviewable.—The refusal of a court of the United States to grant a new trial cannot be reviewed by an appellate court (*Reagan v. United States*, 157 U. S. 301; *Blitz v. United States*, 153 U. S. 308; *Moore v. United States*, 150 U. S. 57; *Holder v. United States*, 150 U. S. 91; *Bucklin v. United States*, 159 U. S. 682; *Smith v. State of Mississippi*, 162 U. S. 592; *Wheeler v. United States*, 159 U. S. 523; *Sigafus v. Porter*, 56 U. S. App. 62; 84 Fed. Rep. 430; *City of Lincoln v. Sun Vapor Street Light Co.*, 19 U. S. App. 431; 59 Fed. Rep. 756; *Richmond Ry. & Elec. Co. v. Dick*, 8 U. S. App. 99; 52 Fed. Rep. 379; *Morning Journal Assn. v. Rutherford*, 1 U. S. App. 296; 51 Fed. Rep. 513; *Smith v. Sun Printing & Pub. Assn.*, 14 U. S. App. 173; 55 Fed. Rep. 240; *Woodbury v. Shawncetown*, 34 U. S. App. 655; 74 Fed. Rep. 205; *The Natchez*, 41 U. S. App. 708; 78 Fed. Rep. 183; *Willis v. Board of Commrs.*, 86 Fed.

Rep. 872; *Nederland Life Ins. Co. v. Hall*, 86 Fed. Rep. 741; *Atlas Distilling Co. v. Rheinstrom*, 86 Fed. Rep. 244; *Luitweiler v. United States*, 85 Fed. Rep. 957; *Zimpelman v. Hipwell*, 2 U. S. App. 568; 54 Fed. Rep. 848; *Northern Pac. Ry. Co. v. Charless*, 7 U. S. App. 359; 51 Fed. Rep. 562; *Southwestern Virginia Imp. Co. v. Frari*, 8 U. S. App. 444; 58 Fed. Rep. 171; *Little Josephine M. Co. v. Fullerton*, 19 U. S. App. 190; 58 Fed. Rep. 521; *Edge Moore Bridge Works v. Fields*, 8 U. S. App. 449; 58 Fed. Rep. 173; *Alexander v. United States*, 15 U. S. App. 158; 57 Fed. Rep. 828; *Condran v. Chicago M. & St. P. Ry. Co.*, 32 U. S. App. 182; 67 Fed. Rep. 522). While the result of the motion for a new trial is not reviewable, yet the exclusion of affidavits on such motion may be reviewed as to the question of their admissibility (*Mattox v. United States*, 146 U. S. 140). When a trial court refuses to consider a ground urged for a new trial for the reason that it considers it has no power to do so, its refusal may be assigned as error (*Felton v. Spiro*, 47 U. S. App. 402; 78 Fed. Rep. 576; *Emanuel v. Gates*, 2 U. S. App. 525; 53 Fed. Rep. 772; *Fitzsimmons v. United States*, 13 U. S. App. 166; 54 Fed. Rep. 812; *Middlesex Banking Co. v. Smith*, 83 Fed. Rep. 133; *Rhodes v. United States*, 49 U. S. App. 156; 79 Fed. Rep. 740; *Philip Schneider B. Co. v. American Ice Mach. Co.*, 40 U. S. App. 382; 77 Fed. Rep. 138; *Supreme Lodge of K. of P. v. Hill*, 42 U. S. App. 200; 76 Fed. Rep. 468; *Morris v. Canda*, 80 Fed. Rep. 739; *Prichard v. Budd*, 42 U. S. App. 186; 76 Fed. Rep. 710; *Criner v. Mathews*, 32 U. S. App. 405; 67 Fed. Rep. 945; *Berry v. Seawell*, 31 U. S. App. 30; 65 Fed. Rep. 742).

Appellate jurisdiction of circuit court of appeals—**Generally.**—The entire federal appellate jurisdiction is divided between the supreme court and the circuit court of appeals (*Badaracco v. Cerf*, 10 U. S. App. 492;

53 Fed. Rep. 169.) The policy of the law creating circuit courts of appeals shows marked liberality in allowing appeals in all cases (*Warner v. Texas Pac. Ry. Co.*, 2 U. S. App. 647; 54 Fed. Rep. 920.) The circuit court of appeals will not decide questions which have become mere moot questions (*United States v. Arnold*, 46 U. S. App. 667; 82 Fed. Rep. 769). The circuit court of appeals has jurisdiction to review a decision of the district court releasing on habeas corpus a person arrested in one State for violation of the interstate commerce act and held for removal to another State to answer to an indictment there found (*United States v. Fowkes*, 3 U. S. App. 247; 53 Fed. Rep. 13). Where the judgment or decree in a case entered upon the mandate of an appellate court determines questions not covered thereby, it is subject to review by appeal or writ of error, in the proper appellate court (*Metcalf v. City of Watertown*, 34 U. S. App. 107; 68 Fed. Rep. 859). But if no new questions arise, the circuit court of appeal cannot review such judgment (*Texas & Pac. Ry. Co. v. Anderson*, 149 U. S. 237). Where the jurisdiction depended solely upon diverse citizenship of the parties the circuit court of appeals alone had jurisdiction to review the decision of the circuit court (*Voorhees v. Noye Mfg. Co.*, 151 U. S. 135.) The circuit court of appeals had jurisdiction to review causes pending in the circuit courts at the time of its creation, although such causes being for less than \$5,000 were not previously reviewable in any court (*Northern Pac. Ry. Co. v. Amato*, 1 U. S. App. 113; 49 Fed. Rep. 881). The circuit court cannot interfere with the granting of writs of error, either by enjoining application for a writ or by directing its dismissal after issue (*Ex parte Chetwood*, 165 U. S. 443). The circuit court of appeals will of its own motion, notice a defect of jurisdiction in the circuit court, and will

reverse and remand the case (*Tinsley v. Hoot*, 2 U. S. App. 548; 53 Fed. Rep. 682; *Wetherby v. Stinson*, 18 U. S. App. 1714; 62 Fed. Rep. 173.)

(1) **Habeas corpus appeals.**—The circuit courts of appeals have succeeded to the appellate jurisdiction of the circuit courts for reviewing habeas corpus proceedings in the district courts (*United States v. Fowkes*, 3 U. S. App. 247; 53 Fed. Rep. 13).

(2) **Where United States is a party.**—The circuit court of appeals has jurisdiction to review, on writ of error, a judgment rendered in an action against the United States (*United States v. Coudert*, 38 U. S. App. 515; 73 Fed. Rep. 505; *United States v. Morgan*, 27 U. S. App. 410; 64 Fed. Rep. 4; *Scranton v. Wheeler*, 16 U. S. App. 152; 57 Fed. Rep. 803). The United States have a right to appeal from any judgment of any amount rendered against them under the act of March 3, 1887 (*United States v. Yukers*, 23 U. S. App. 292; 60 Fed. Rep. 641).

(3) **Under former bankruptcy act.**—There is a difference of opinion as to whether the appellate jurisdiction of the circuit court in bankruptcy cases under the former act was transferred to the circuit court of appeals. The following case holds that such jurisdiction was transferred (*Duff v. Carrier*, 3 U. S. App. 552; 55 Fed. Rep. 433). While there are decisions to the effect that the circuit court of appeals has no appellate jurisdiction over such matters (*In re Briggs*, 20 U. S. App. 579; 61 Fed. Rep. 498). The circuit court of appeals has no jurisdiction to review decisions of the circuit court in bankruptcy cases arising under the former act (*Huntington v. Saunders*, 33 U. S. App. 416; 72 Fed. Rep. 10).

(4) **Appellate jurisdiction of circuit court of appeals not concurrent with supreme court.**—The circuit court of appeals has no jurisdiction to review a decision which involves a construction or application of the constitution or laws of the United States (*Hamilton v. Drisdale*, 2 U. S. App. 540; 53 Fed. Rep. 753; *Barr v. Mayor of New Brunswick*, 39 U. S. App. 187; 72 Fed. Rep. 689; *Chicago M. & St. P. Ry. Co. v. Evans*, 19 U. S. App. 233; 58 Fed. Rep. 433; *Mayor of Macon v. Georgia Packing Co.*, 13 U. S. App. 592; 60 Fed. Rep. 781; *Hastings v. Ames*, 32 U. S. App. 485; 68 Fed. Rep. 726.) The circuit courts of appeals have no jurisdiction to entertain an appeal in which the only question at issue is as to the jurisdiction of the court below (*The Alliance*, 44 U. S. App. 52; 70 Fed. Rep. 273; *United States v. Severens*, 37 U. S. App. 622; 71 Fed. Rep. 768; *Davis & Rankin B. & M. Co. v. Barber*, 18 U. S. App. 476; 60 Fed. Rep. 465). The circuit court of appeals has no jurisdiction of an appeal from an interlocutory order granting a preliminary injunction when constitutional questions are involved (*Town of Westerly v. Westerly Waterworks*, 33 U. S. App. 723; 76 Fed. Rep. 467). Where in a suit in the circuit court it is claimed that a law of a State is void because it contravenes the constitution of the United States, the circuit court of appeals has no jurisdiction of the case, although it may involve many other important questions (*Pauly Jail Bldg. & Mfg. Co. v. Crawford Co.*, 56 U. S. App. 53; 84 Fed. Rep. 942; *Holt v. Indiana Mfg. Co.*, 46 U. S. App. 717; 80 Fed. Rep. 1). Where an appeal is taken to the supreme court direct on constitutional grounds and an appeal is also taken to the circuit court of appeals, the latter court will stay its hand until the supreme court has disposed of the questions presented to it (*Pullman's Palace Car Co.*

v. Central Transp. Co., 39 U. S. App. 307; 83 Fed. Rep. 1; 76 Fed. Rep. 401). If the question of the jurisdiction of the circuit court is in issue, and the jurisdiction sustained, and then judgment or decree rendered in favor of defendant on the merits, the plaintiff who has maintained the jurisdiction may appeal to the circuit court of appeals, where, if the question of jurisdiction arises, it may be certified (United States v. Jahn, 155 U. S. 109). The jurisdiction of a lower court is not involved where the question is as to whether an action is barred by lapse of time (Laidlaw v. Oregon Ry. Co., 48 U. S. App. 430; 81 Fed. Rep. 876). When the case involves the construction or application of the federal constitution, together with other questions, the circuit court of appeals may review the decision of the circuit court (Texas & P. R. Co. v. Bloom, 23 U. S. App. 143; 60 Fed. Rep. 979; Green v. Mills, 25 U. S. App. 383; 69 Fed. Rep. 852; City of Indianapolis v. Cent. Trust Co., 53 U. S. App. 658; 83 Fed. Rep. 529). When the record presents both a question as to the jurisdiction of the circuit court and other questions within the appellate jurisdiction of the circuit court of appeals, the latter court has jurisdiction of the whole case (Coler v. Grainger County, 43 U. S. App. 252; 74 Fed. Rep. 16; Crabtree v. Madden, 12 U. S. App. 159; 54 Fed. Rep. 426; Rust v. United Waterworks Co., 36 U. S. App. 167; 70 Fed. Rep. 129; Gates v. Bucki, 12 U. S. App. 69; 53 Fed. Rep. 961; Baltimore & Ohio R. R. v. Meyers, 18 U. S. App. 569; 62 Fed. Rep. 367; American Sug. Ref. Co. v. Johnson, 13 U. S. App. 681; 60 Fed. Rep. 503; Texas & P. R. Co. v. Bloom, 23 U. S. App. 143; 60 Fed. Rep. 979). On a writ of error in an action which appears to have been improperly removed the appellate court has power to determine whether the circuit court had power to hear the

case on its merits (*Grand Trunk Ry. Co. v. Twit-
chell*, 21 U. S. App. 45; 59 Fed. Rep. 727); and the
circuit court of appeals will review a decision in-
volving a question as to whether the action had
abated by death of original plaintiff (*Henderson v.
Henshall*, 7 U. S. App. 565; 54 Fed. Rep. 320). The
circuit courts of appeal have no power to issue a
mandamus directing a circuit court to dismiss a
case on the ground that no jurisdiction has been ac-
quired over defendant by the method of service pur-
sued (*United States v. Severens*, 37 U. S. App. 622;
71 Fed. Rep. 768). After the supreme court decides
that the circuit court has jurisdiction of a cause,
and remands the same for the taking of an account,
the circuit court of appeals cannot, on a subse-
quent appeal, reopen the question of jurisdiction
(*Nashua & L. R. Corp. v. Boston & L. R. Corp.*, 5
U. S. App. 97; 51 Fed. Rep. 929). The circuit court
of appeals has jurisdiction to review a decision
that complainant has not made out a case properly
cognizable in a court of equity, for such a case is
not one involving a question of the jurisdiction of
the lower court (*World's Columbian Exposition v.
United States*, 18 U. S. App. 42; 56 Fed. Rep. 654;
Reynolds v. Watkins, 22 U. S. App. 83; 60 Fed. Rep.
824). Where the lower court has refused to take
jurisdiction of a case the circuit court of appeals has
no power to compel it to do so, for such power rests
with the supreme court (*United States v. Swan*, 31
U. S. App. 112; 65 Fed. Rep. 647).

(5) "Unless otherwise provided."—The words "un-
less otherwise provided by law," employed in sec-
tion 6 of the statute, were intended to guard against
implied repeals, and are not to be construed as re-
ferring to prior laws only. (*Lau Ow Bew v. U. S.*,
144 U. S. 47.)

Who may appeal.—One who is named as a party to the bill but who is not served with process and does not appear, cannot be heard on appeal (*Cook v. Lasher*, 42 U. S. App. 42; 73 Fed. Rep. 701; but see contra, *American Loan & T. Co. v. Clark*, 49 U. S. App. 571; 83 Fed. Rep. 230). The manufacturers of an article alleged to infringe a patent have a right to appeal a suit for infringement brought against the vendors of the article, when the manufacturers were the real, though not the nominal defendants, and assumed the whole burden of the litigation (*Andrews v. Thum*, 21 U. S. App. 459; 64 Fed. Rep. 149). Part of the defendants cannot maintain an appeal where the judgment is joint, in the absence of proceedings to effect a severance of their interests (*The Columbia*, 29 U. S. App. 647; 67 Fed. Rep. 942; *Beardsley v. Arkansas & La. Ry. Co.*, 158 U. S. 123; *Hardee v. Wilson*, 146 U. S. 179; *Inglehart v. Stansbury*, 151 U. S. 68; *Humes v. Third Nat. Bank*, 13 U. S. App. 86; 54 Fed. Rep. 917). But where the decree is several and the interest of each defendant separate and distinct from that of the others, any defendant may appeal separately without a summons and severance (*Gilfillan v. McKee*, 159 U. S. 303; *The Columbia*, 44 U. S. App. 326; 73 Fed. Rep. 226). One who joins in the petition for appeal, though not in the appeal bond which is executed by his co-appellant is a party to the appeal (*Central Trust Co. v. Continental Trust Co.*, 86 Fed. Rep. 517). The claimant of a vessel may appeal alone from a decree without joining the sureties in the stipulation (*The Glide*, 25 U. S. App. 636; 72 Fed. Rep. 200). Failure of a party to a decree for divided damages to appeal, prevents the appellate court from reversing a decree as to him (*The J. & J. McCarthy*, 26 U. S. App. 11; 61 Fed. Rep. 516).

Judgments final in circuit court of appeals.—Where a decree of the circuit court of appeals is final in the main suit, decrees in accessory and subordinate proceedings are also final (*Gregory v. Van Ee*, 160 U. S. 643; *Rouse v. Letcher*, 156 U. S. 47). Where one judge of the circuit court of appeals is disqualified and the other two are divided in opinion, and the judgment of the circuit court of appeals is not “final” it is not necessary for that court to order a reargument before a full bench, nor proper to certify questions to the supreme court for instructions (*Texas & Pac. R. Co. v. Gentry*, 13 U. S. App. 531; 57 Fed. Rep. 422). In cases in which the jurisdiction of the circuit court of appeals is not made final there is a right of appeal or writ of error by supreme court where the matter in controversy exceeds \$1,000 besides costs (*Northern Pac. Ry. Co. v. Amato*, 144 U. S. 465).

(1) **When diverse citizenship is only ground.**—When diverse citizenship is the only ground of jurisdiction, the judgment of the circuit court of appeals is final (*Press Pub. Co. v. Monroe*, 164 U. S. 105; *American Construction Co. v. Jacksonville T. & K. W. Ry. Co.*, 148 U. S. 372; *Benjamin v. City of New Orleans*, 169 U. S. 161; *Rouse v. Letcher*, 156 U. S. 47; *Colorado Cent. Cons. Co. v. Turck*, 150 U. S. 138; *Rouse v. Hornsby*, 161 U. S. 588); and this is so even though defendant invokes the federal constitution and laws (*Press Pub. Co. v. Monroe*, 164 U. S. 105). Where a court had jurisdiction of a suit only upon the ground of diverse citizenship and the court’s jurisdiction over an ancillary suit depended only upon its jurisdiction over the original suit, the decree of the circuit court of appeals is final (*Carey v. Houston & Tex. Cent. Ry. Co.*, 161 U. S. 115; *Rouse v. Letcher*, 156 U. S. 47).

If the circuit court of appeals had jurisdiction of the cause not alone on the ground of diverse citizenship, but on the further ground that a Federal question was involved the judgment of the circuit court of appeals was not final. (*Union Pacific Ry. Co. v. Harris*, 158 U. S. 326; *Northern Pacific Ry. Co. v. Amato*, 144 U. S. 465.) But if the jurisdiction of the circuit court of appeals was originally invoked upon the sole ground of diverse citizenship, its judgment is final, even if another ground were developed in the course of the proceeding (*Ex parte Jones*, 164 U. S. 691; *Borgmeyer v. Idler*, 159 U. S. 408).

(2) **Cases arising under revenue laws.**—The judgments of the circuit court of appeals are final in cases arising under the revenue laws (*Hubbard v. Soby*, 146 U. S. 56). A judgment of the circuit court on appeal from the decision of the board of general appraisers is one arising under the revenue laws (*United States v. Hopewell*, 5 U. S. App. 137; 51 Fed. Rep. 798).

(3) **Cases arising under patent laws.**—A suit by the United States to cancel a patent for an invention is not a case arising under the patent laws, and such a suit is not final in the circuit court of appeals (*United States v. American Bell Tel. Co.*, 159 U. S. 548).

(4) **Cases arising under criminal laws.**—A writ of scire facias upon a forfeited recognizance to secure the appearance of a person to answer to a charge of embezzlement is a case arising under criminal laws (*Hunt v. United States*, 166 U. S. 424).

Effect of decisions of other courts in circuit court of appeals.—The circuit court of appeals is not bound by the rule of the circuit courts in patent cases that decisions in other circuits in relation to

the same patent must be followed (National Cash Register Co. v. American Cash Register Co., 3 U. S. App. 340; 53 Fed. Rep. 367; Wanamaker v. Enterprise Mfg. Co., 3 U. S. App. 414; 53 Fed. Rep. 791; Edison Electric Light Co. v. Columbia Incandescent L. Co., 56 Fed. Rep. 496); but see Duplex Printing Press Co. v. Campbell etc. Co. 37 U. S. App. 250; 69 Fed. Rep. 250). A decision of the circuit court of appeals is entitled to more weight in other federal courts than that given to State tribunals or other courts of mere concurrent jurisdiction (Beach v. Hobbs, 82 Fed. Rep. 916; Edison Electric Light Co. v. Bloomington, 65 Fed. Rep. 212). Circuit courts of appeals are not bound to follow a decision of a circuit court not appealed from (American Mortg. Co. v. Hopper, 29 U. S. App. 12; 64 Fed. Rep. 553).

Certification of questions to supreme court by circuit court of appeals.—The circuit court of appeals will not certify the questions in a case to the supreme court, except before it decides them, and upon its own motion (Andrews v. National Foundry & P. Co., 46 U. S. App. 619; 77 Fed. Rep. 774; Louisville N. A. & C. Ry. Co. v. Pope, 46 U. S. App. 25; 74 Fed. Rep. 1). An application to certify certain questions to the supreme court for decision will be denied where the case presents no peculiarities rendering such action appropriate (The Horace B. Parker, 33 U. S. App. 389, 503, 679; 74 Fed. Rep. 640; Fabre v. Cunard Steamship Co., 11 U. S. App. 616; 59 Fed. Rep. 500). A circuit court of appeals will not withhold a decision of other questions presented for review in a case because on one out of many it desires the opinion of the supreme court (Sigafus v. Porter, 56 U. S. App. 62; 84 Fed. Rep. 430). Certification cannot be granted where the

mixed issues of law and fact could be reviewed satisfactorily only upon examination of the entire record (*Fabre v. Cunard Steamship Co.*, 11 U. S. App. 616; 59 Fed. Rep. 500; *Warner v. City of New Orleans*, 167 U. S. 467; *Graver v. Faurot*, 162 U. S. 435; *Cross v. Evans*, 167 U. S. 60). In order to invoke the exercise of the jurisdiction of the supreme court in the instruction of the circuit court of appeals the questions or propositions of law, the proper decision of which instruction is asked, must be clearly and distinctly certified and the certificate must show that instruction is desired (*Columbus Watch Co. v. Robbins*, 148 U. S. 266; *United States v. Union Pac. Ry. Co.*, 168 U. S. 505; *McHenry v. Alford*, 163 U. S. 651; *Cross v. Evans*, 167 U. S. 60). The assertion of a difference of decision between two circuit courts of appeals upon the same facts, and of a wish that it might be determined by the supreme court is not equivalent to the expression of a desire for instruction as to the proper decision of a specific question or questions requiring determination in the proper disposition of the case (*Columbus Watch Co. v. Robbins*, 148 U. S. 266). A certificate of propositions of law is irregular where a quorum of the circuit court of appeals which desires instruction does not sit in the case (*Cincinnati H. & D. R. Co. v. McKeen*, 149 U. S. 259). The certificate should contain a proper statement of the facts on which the questions or propositions of law arise (*Cincinnati H. & D. R. Co. v. McKeen*, 149 U. S. 259). The whole record should not be transmitted to the supreme court (*Cincinnati H. & D. R. Co. v. McKeen*, 149 U. S. 259; *Graver v. Faurot* 162 U. S. 435). Questions certified by the circuit court of appeals will not be considered when other separate and distinct propositions of law not expressly referred to in the certificate are essential to be passed upon

in considering the general questions certified (*Cross v. Evans*, 167 U. S. 60; *United States v. Union Pac. Ry. Co.*, 168 U. S. 505). The practice of certification is intended to be availed of only when the certifying court is in doubt about the specific question or questions certified, and not as an allowance of appeal (*Sigafus v. Porter*, 56 U. S. App. 62; 85 Fed. Rep. 689). For a case which was of a nature to be certified, see *National Ace. Soc. v. Spiro*, 37 U. S. App. 639; 71 Fed. Rep. 897. Section 6 of the act of Congress of March 3, 1891, establishing the circuit court of appeals, making its decisions final in certain cases, but providing that the supreme court may require any such case to be certified to it for instructions does not require the appellate court to certify any question for review by the supreme court, which identical question had been already decided by the supreme court. (*Lau Ow Bew v. United States*, 7 U. S. App. 1; 47 Fed. Rep. 641.)

§ 177 a. Appeals in criminal cases not capital.

—Appeals or writs of error may be taken from the district courts or circuit courts to the proper circuit court of appeals in cases of conviction of an infamous crime not capital. (29 U. S. Stats. 492.)

Infamous crimes.—The use of the mails for promoting a scheme to defraud being punishable by imprisonment in a State penitentiary not exceeding eighteen months, is an infamous crime (*Stokes v. United States*, 23 U. S. App. 289; 60 Fed. Rep. 597). Under the original act the circuit court of appeals had no jurisdiction in cases of infamous crimes not capital; but the jurisdiction in such cases was taken from the supreme court and conferred on the circuit court of appeals by the above act (29 U. S. Stats. 492).

§ 178. **Certiorari from supreme court.**—And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals, it shall be competent for the supreme court to require, by certiorari or otherwise, any such case to be certified to the supreme court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the supreme court. (26 U. S. Stats. 828, sec. 6, cl. 2.)

Certiorari to compel circuit court of appeals to certify cases.—The jurisdiction of the supreme court to require by certiorari or otherwise a case to be certified from the circuit court of appeals to the supreme court for its review and determination should be exercised only in cases of gravity and importance, or in order to secure uniformity of decision (*American Const. Co. v. Jacksonville, Tampa & Key West*, 148 U. S. 372; *Forsyth v. Hammond*, 166 U. S. 506; *United States v. Three Friends*, 166 U. S. 1; *In re John Woods*, 142 U. S. 202; *In re Lau Ow Bew*, 144 U. S. 47; *Smith v. Vulcan Iron Works*, 165 U. S. 518.) The power of the supreme court to compel the certification of a case to it by the circuit court of appeals is not affected by the condition of the case as it exists in the latter court, but may be exercised before or after any decision by that court, and irrespective of any ruling or determination therein (*Forsyth v. Hammond*, 166 U. S. 506). Certiorari is the proper remedy to review a decision of the circuit court of appeals dismissing for want of jurisdiction a case within the class of cases in which the judgment of that court is made final (*Kingman & Co. v. Western Mfg. Co.*, 170 U. S. 675; *American Const. Co. v. Jacksonville T. & K. W. Ry. Co.*, 148

U. S. 372). The effect of a certiorari when awarded by the supreme court in a case decided by the circuit court of appeals is to suspend any action that might be taken by that court or by the trial court in obedience to its mandate; but it does not restore jurisdiction to the trial court nor give such court authority to set aside orders legally and properly made in obedience to the mandate of the circuit court of appeals, before the writ of certiorari was awarded (*Louisville N. A. & C. Ry. Co. v. Louisville Trust Co.*, 78 Fed. Rep. 659). The judgment of the circuit court of appeals need not be a final judgment in order to be reviewed by certiorari; it is within the discretion of the supreme court to determine at what stage of the proceedings the case should be required to be sent up for review (*American Const. Co. v. Jacksonville T. & K. W. R. Co.*, 148 U. S. 372; but certiorari should not issue to review an interlocutory order unless it is necessary to prevent extraordinary inconvenience in the conduct of the cause (*American Const. Co. v. Jacksonville etc. Ry. Co.*, 148 U. S. 372). The exclusion of a Chinese merchant under the Chinese exclusion act, notwithstanding satisfactory evidence of his status as a merchant here, presents a question of such importance as will justify the supreme court in requiring the circuit court of appeals to certify the case to it for review. (*Lau Ow Bew*, 141 U. S. 583.) If the case is one from which an appeal will lie from the circuit court of appeals to the supreme court, certiorari will not issue to review the judgment of the former court. (*Re Tampa Suburban Ry. Co.*, 168 U. S. 583.) The whole case is open for examination when the supreme court issues a writ of certiorari to bring up the whole record. (*Panama Ry. Co. v. Napier Shipping Co.*, 166 U. S. 280.) The fact that the mandate of the circuit court of appeals has

gone down does not preclude a writ of certiorari from the supreme court to review the decision of a circuit court of appeals. (The Conqueror, 166 U. S. 110.) Certiorari will issue to review judgments in contempt proceedings rendered in excess of jurisdiction, if there is no other adequate remedy. (Ex parte Chetwood, 165 U. S. 443.) An application for a certiorari to review a decree of the circuit court entered after the adjournment of the supreme court for the term, is made with reasonable promptness if during the next term of the court and within a year after the original decree. (The Conqueror, 166 U. S. 110.)

§ 179. Appeals to supreme court from circuit court of appeals.—In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the supreme court of the United States, where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed. (26 U. S. Stats. 828, sec. 6, cl. 3.)

Appeals from circuit court of appeals to supreme court.—The judgment of the circuit court of appeals is not final where the jurisdiction of the circuit court did not depend upon diverse citizenship of parties, but upon the fact that the suit arose under a law of the United States. (Northern Pac. Ry. Co. v. Amato, 144 U. S. 465; Union Pacific Ry. Co. v. Harris, 158 U. S. 326.) A writ of error from the supreme court does not lie to review a judgment of the circuit court of appeals which is not a final judgment by virtue of the last clause of section 6, act 1891, creating circuit courts of appeals. (McLeod v. Graven, 47 U. S. App. 573; 79 Fed. Rep. 84; Lutchter v. United States, 157

U. S. 427.) The mandate of the circuit court of appeals which has gone down need not be recalled in order to appeal to the supreme court in cases not final in the circuit court of appeals. (*Ritter v. Mutual Life Ins. Co.*, 39 U. S. App. 189; 72 Fed. Rep. 567.) An appeal will lie to the supreme court in cases not final in the circuit court of appeals where the matter in controversy exceeds \$1000 besides costs. (*Northern Pac. Ry. Co. v. Amato*, 144 U. S. 465; U. S. v. *Wanamaker*, 147 U. S. 149.) The matter in controversy must have actual value and cannot be supplied on speculation. (*Huntington v. Saunders*, 163 U. S. 319.) The stipulation of the parties as to the amount in controversy is not controlling, but may be taken into consideration. (U. S. v. *Trans-Missouri Freight Assn.*, 166 U. S. 290.) If the decree fail to specify the sum for which it is given it is final. (*Texas & Pac. Ry. Co. v. Gentry*, 163 U. S. 353.) An appeal from a decree of a circuit court which affirms its own prior decree in obedience to a mandate from the circuit court of appeals is not an appeal from the latter court but from the circuit court, of which the supreme court has no jurisdiction. (*Webster v. Daly*, 163 U. S. 155.)

Time for appeal.—A rule limiting the time for an appeal is applicable to a case already decided. (Re *Phillip Hien*, 166 U. S. 432.) Where a motion for a rehearing is made in season and entertained by the court, the decree does not take final effect for the purposes of an appeal until the motion is disposed of. (*Voorhees v. Noye Mfg. Co.*, 151 U. S. 135; *Aspen Min. & Sm. Co. v. Billings*, 150 U. S. 31.)

- § 180. **Appeal in injunction proceedings.**—
• Where, upon a hearing in equity in a district or a circuit court, an injunction shall be granted, con-

tinued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, in a case in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve an injunction to the circuit court of appeals; provided, that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court during the pendency of such appeal; and *provided, further*, that the court below may in its discretion require as a condition of the appeal an additional injunction bond. (26 U. S. Stats. 828, sec. 7; as amended 28 U. S. Stats. 666.)

Appeals from interlocutory orders relating to injunctions.—The appellate jurisdiction of the circuit court of appeals extends to interlocutory orders relating to injunctions (Robinson v. Belt, 12 U. S. App. 431; 56 Fed. Rep. 328), and the jurisdiction extends to interlocutory decrees made after full hearing on the merits granting an injunction. (Lockwood v. Wickes, 36 U. S. App. 321; 75 Fed. Rep. 118.) On an appeal from an interlocutory order the court has power to hear the whole case and to make final disposition of it. (Clark v. McGhee, 00 U. S. App. 000; 87 Fed. Rep. 787; Mayor of Knoxville v. Africa, 47 U. S. App. 74; 77 Fed. Rep. 502; Bissell Carpet Sweeper Co. v. Goshen Sweeper Co., 43 U. S. App. 47; 72 Fed. Rep. 545; Consol. Piedmont Cable Co. v. Pacific Cable Ry.

Co., 15 U. S. App. 216; 58 Fed. Rep. 226; *Marden v. Campbell Printing Press & Mfg. Co.*, 38 U. S. App. 123; 67 Fed. Rep. 809; *Smith v. Vulcan Iron Works*, 165 U. S. 518, but where the record is insufficient or incomplete, the court will only consider whether the interlocutory order was providently granted. (*Clark v. McGhee*, 87 Fed. Rep. 789.) On the hearing of an appeal from an interlocutory order, where the jurisdiction of the lower court is of a grave and vital character, the circuit court of appeals will not decide the question of jurisdiction, but will decide the question of injunction on its merits. (*Carson v. Combe*, 86 Fed. Rep. 202.) On appeal from an interlocutory order in determining whether an injunction was improperly granted in connection with the appointment of a receiver, the propriety of the entire order may be considered. (*United States Rubber Co. v. American Oak Leather Co.*, 53 U. S. App. 444; 82 Fed. Rep. 248; but see, contra, *Florida Consol. Co. v. Young*, 11 U. S. App. 683; 59 Fed. Rep. 721.) In a case in which a final decree of a circuit court would be appealable to the circuit court of appeals, an appeal will lie from an interlocutory order granting injunction, even though such an appeal raises the question of the lower court's jurisdiction. (*Lake Nat. Bank v. Wolfborough*, 23 U. S. App. 734; 78 Fed. Rep. 517.) The discretion of the chancellor in granting, dissolving or refusing to dissolve an injunction will be interfered with only in cases of manifest error. (*Ritter v. Ulman*, 42 U. S. App. 263; 78 Fed. Rep. 222; *Bradshaw v. Miner's Bank*, 46 U. S. App. 663; 77 Fed. Rep. 932; *Lockwood v. Wickes*, 36 U. S. App. 321; 75 Fed. Rep. 118; *Duplex Printing Press Co. v. Campbell P. P. & Mfg. Co.*, 37 U. S. App. 250; 69 Fed. Rep. 250; *Thompson v. Nelson*, 37 U. S. App. 478; 71 Fed. Rep. 339; *Workingman's A. C. of New Orleans v. United States*, 13 U. S. App. 426; 57 Fed. Rep. 85.) The power of

the circuit court of appeals to review an order granting or refusing a preliminary injunction cannot be restricted by any prior ruling of the circuit court involving the same question, though made in an order from which a direct appeal is not allowed. (*Lake Street El. R. Co. v. Farmer's L. & T. Co.*, 46 U. S. App. 630; 77 Fed. Rep. 764.) No appeal lies from an order denying a motion to restrain plaintiff from prosecuting a suit to foreclose a mortgage pending the determination of a cross-bill, the cross-bill as filed containing no prayer for an injunction. (*American Trust & Sav. Bank v. Farmer's Loan & T. Co.*, 53 U. S. App. 395; 81 Fed. Rep. 925.) An appeal in a patent case from an interlocutory decree awarding an injunction must be dismissed when it appears that the patent has expired pending the appeal. (*Lockwood v. Wickes*, 36 U. S. App. 321; 75 Fed. Rep. 118.) Where a patent is sustained after full hearing on the merits, complainant should not be allowed as an absolute right to waive his right to an injunction, and thereby deprive defendant of an opportunity to appeal from an interlocutory decree. (*Lockwood v. Wickes*, 36 U. S. App. 321; 75 Fed. Rep. 118.) Where, on the motion of an intervenor, the proceedings in an equity case are stayed and a receivership vacated until the further order of the court, this is an interlocutory order granting an injunction. (*Pennsylvania etc. R. Co. v. Jacksonville T. & K. Ry. Co.*, 2 U. S. App. 606; 55 Fed. Rep. 131.) An order so modifying an interlocutory decree for a broad perpetual injunction against infringing a patent as to permit defendant to manufacture and sell for a limited time certain infringing machines, is an order dissolving pro tanto an original injunction, and is consequently an appealable interlocutory order. (*Bissell Carpet Sweeper Co. v. Goshen Sweeper Co.*, 43 U. S. App. 47; 72 Fed. Rep. 545.) Upon an affirmance

of an interlocutory decree granting an interlocutory injunction, the mandate should simply recite that the court finds no error in the decree awarding the injunction. (*Goshen Sweeper Co. v. Bissell Carpet Sweeper Co.*, 37 U. S. App. 555; 72 Fed. Rep. 67.) The appellate court cannot pass upon questions not yet passed upon by the court below. (*Hart v. Buckner*, 2 U. S. App. 488; 54 Fed. Rep. 925.) An order denying a rehearing and dissolution of an injunction was not appealable under section 7 of the Judiciary Act of 1891, as it was originally passed. (*Boston & A. R. Co. v. Pullman's Palace Car Co.*, 5 U. S. App. 94; 51 Fed. Rep. 305; *Dreutzer v. Frankfort Land Co.*, 31 U. S. App. 83; 65 Fed. Rep. 642.) The circuit court of appeals has no jurisdiction of an appeal from an interlocutory order granting a preliminary injunction when constitutional questions are involved. (*Town of Westerly v. Westerly Waterworks*, 33 U. S. App. 723; 76 Fed. Rep. 467.) The affirmance of an interlocutory decree granting an injunction does not deprive the circuit court of its inherent power temporarily to suspend such injunction. (*Edison Elec. L. Co. v. U. S. Electric L. Co.*, 11 U. S. App. 600; 59 Fed. Rep. 501.) A decree which is rendered after full hearing on the merits, and which sustains the validity of a patent or trademark, declares infringement and awards a perpetual injunction and an accounting, is an appealable interlocutory decree. (*Richmond v. Atwood*, 5 U. S. App. 151; 52 Fed. Rep. 10; *Columbus Watch Co. v. Robbins*, 6 U. S. App. 275; 52 Fed. Rep. 337; *Raymond v. Royal Baking Powder*, 46 U. S. App. 494; 76 Fed. Rep. 465.) The term "interlocutory order or decree" was used in its broadest sense in the act of 1891, and should be given full scope. (*Richmond v. Atwood*, 5 U. S. App. 151; 52 Fed. Rep. 10.) A preliminary injunction made upon a *prima facie* showing is an interlocutory order

of injunction. (*Andrews v. National Foundry & P. Works*, 24 U. S. App. 81; 61 Fed. Rep. 782.) Prior to the amendment of section 7 of the act of 1891, no appeal could be taken from an interlocutory order dissolving a restraining order and denying an injunction. (*Robinson v. City of Wilmington*, 8 U. S. App. 541; 60 Fed. Rep. 469; *Denver & G. R. Co. v. Walker*, 32 U. S. App. 420; 68 Fed. Rep. 23.) The circuit court of appeals can have no jurisdiction of an appeal from an interlocutory order if the case is of such a character that it would have no jurisdiction of an appeal from a final decree therein. (*Mayor of Macon v. Georgia Packing Co.*, 13 U. S. App. 542; 60 Fed. Rep. 781.) The appellant, under section 7 of the act of 1891, has no absolute right to a supersedeas of the injunction pending an appeal on the filing a proper bond. (*Re Haberman Mfg. Co.*, 147 U. S. 525.) An interlocutory order appointing a receiver is not an appealable order granting an injunction merely because it contains directions of a mandatory character. (*Highland Avenue & B. R. Co. v. Columbian Equipment Co.*, 168 U. S. 627.) A complainant has no right in an appeal in a patent case to a cross appeal in respect to so much of a decree as declares that certain claims of his patent are void. (*Marden v. Campbell P. P. & Mfg. Co.*, 33 U. S. App. 123; 67 Fed. Rep. 809.) A trial court does not lose jurisdiction of a cause by erroneously allowing an appeal therein from an interlocutory order which is not appealable. (*Riddle v. Hudgins*, 19 U. S. App. 144; 58 Fed. Rep. 490.) On appeal from an order granting a preliminary injunction in a patent case, where a court below places its action entirely on a prior decision in another circuit, sustaining the patent, the circuit court of appeals is at liberty to re-examine the whole question, giving only such weight to the former adjudication as the same is entitled to

(Thomson-Houston Electric Co. v. Hoosick R. R. Co., 51 U. S. App. 437; 82 Fed. Rep. 461), but ordinarily the circuit court of appeals will treat the case from the standpoint from which it was viewed by the circuit court. (Thomson-Houston Co. v. Ohio Brass Co., 54 U. S. App. 1; 80 Fed. Rep. 712; Bresnahan v. Tripp Grant Leveller Co., 33 U. S. App. 421; 72 Fed. Rep. 920.) Questions of the validity of the patent and infringement can only be considered incidentally in an appeal from an order granting an injunction pendente lite in a patent case. (Blount v. Societe Anonyme du Filtre etc., 6 U. S. App. 335; 53 Fed. Rep. 98; Columbus Watch Co. v. Robbins, 6 U. S. App. 275; 52 Fed. Rep. 337; Gamewell v. Fire Alarm Tel. Co., 21 U. S. App. 116; 61 Fed. Rep. 208; Kilmer Mfg. Co. v. Griswold, 35 U. S. App. 246; 67 Fed. Rep. 1017; but see Smith v. Vulcan Iron Works, 165 U. S. 518.) A decision on an appeal reversing an order granting a temporary injunction is conclusive only of the rights of the parties upon the showing made in support of the order. (Andrews v. National Foundry & Pipe Works, 24 U. S. App. 81; 61 Fed. Rep. 782.)

Time to take appeal from interlocutory order.—The appeal from an interlocutory order granting a perpetual injunction must be taken within thirty days; the defendant cannot, after the full hearing in the circuit court and granting of the injunction, move the court to dissolve the injunction, and then take an appeal from the order denying the motion. (Baker v. Walter Baker & Co., 42 U. S. App. 654; 83 Fed. Rep. 3.)

§ 180 a. Appellate jurisdiction in bankruptcy cases.—a. The supreme court of the United States, the circuit court of appeals of the United States,

and the supreme courts of the Territories, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The supreme court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States, and from the supreme court of the District of Columbia.

b. The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved. (30 U. S. Stats. 553, sec. 24.)

§ 180 b. Writs of error and appeals in bankruptcy matters.—a. That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories in the following cases, to wit: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) From a judgment granting or denying a discharge; and (3) From a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after

the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

b. From any final decision of a court of appeals, allowing or rejecting a claim under this act, an appeal may be had under such rules and within such time as may be prescribed by the supreme court of the United States, in the following cases, and no other:

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the supreme court of the United States; or

2. Where some justice of the supreme court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this act throughout the United States.

c. Trustees shall not be required to give bond when they take appeal or sue out writs of error.

d. Controversies may be certified to the supreme court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari, pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted. (30 U. S. Stats. 553, sec. 25.)

§ 181. **Expenses of attending judges.**—Any justice or judge, who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held his reasonable expenses for travel and attendance, not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States. (26 U. S. Stats. 828, sec. 8.)

§ 182. **Courtrooms and officers.**—The marshals of the several districts in which said circuit court of appeals may be held shall, under the direction of the attorney-general of the United States, with his approval, provide such rooms in the public buildings of the United States as may be necessary, and pay all incidental expenses of said court, including criers, bailiffs, and messengers. Provided, however, in case proper rooms can be provided in such buildings, then the said marshals, with the approval of the attorney-general of the United States, may, from time to time, leave such rooms as may be necessary for such courts. That the marshals, criers, clerks, bailiffs, and messengers shall be allowed the same compensation for their respective services as are allowed for similar services in the existing circuit courts. (26 U. S. Stats. 829, sec. 9.)

§ 182 a. **Annual report by clerks as to costs, etc.**—The said clerks shall make annually, within

thirty days after the thirtieth day of June, to the secretary of the treasury, a return of all costs collected by them in cases disposed of during the preceding year by said courts, and, after deducting the incidental expenses of their respective offices, including clerk hire and their compensation as provided by section nine of the Act of March third, eighteen hundred and ninety-one, establishing the circuit court of appeals, not exceeding five hundred dollars, said expenses to be certified by the senior judge of the proper circuit, shall pay any surplus of such costs that may remain into the treasury of the United States at the time of making said return; *provided, further*, that each circuit court of appeals shall be entitled to retain and have expended, under the direction of the attorney-general, for law-books for its use, one-half of such surplus accrued therein for the fiscal years eighteen hundred and ninety-five and eighteen hundred and ninety-six. (28 U. S. Stats. 203, 805.)

§ 183. **Remanding causes.**—Whenever on appeal or writ of error, or otherwise, a case coming directly from the district court or existing circuit court shall be reviewed and determined in the supreme court, the cause shall be remanded to the proper district or circuit court for further proceedings, to be taken in pursuance of such determination. And whenever on appeal or writ of error or otherwise, a case coming from a circuit court of appeals shall be reviewed and determined in the supreme court, the cause shall be remanded by the supreme court to the proper district or circuit

court for further proceedings in pursuance of such determination. Whenever on appeal or writ of error or otherwise, a case coming from a district or circuit court shall be reviewed and determined in the circuit court of appeals in a case in which the decision in the circuit court of appeals is final, such cause shall be remanded to the said district or circuit court for further proceedings to be there taken in pursuance of such determination. (26 U. S. Stats. 829, sec. 10.)

Remanding cause by circuit court of appeals.—An appellate court has no power to remand except for the purpose of giving effect to some judgment of its own, and hence it cannot remand a suit in equity merely for the purpose of a rehearing of a cause in the court below in view of new matter to be produced by the defeated party. (*Marden v. Campbell P. P. & Mfg. Co.*, 33 U. S. App. 123; 67 Fed. Rep. 809.) The circuit court of appeals can act upon the court below only by mandate. (*North Bloomfield G. M. Co. v. United States*, 48 U. S. App. 755; 83 Fed. Rep. 2.) When on the coming down of the mandate the court enters a judgment against the sureties on the supersedeas bond, such judgment should be for the amount of the original judgment with interest and costs; it is erroneous to compute the interest to date and then enter judgment for the full amount. (*Gordon v. Third Nat. Bank*, 3 U. S. App. 554; 56 Fed. Rep. 790.) If the appellate court commits an error in failing to give the successful party costs, it should be corrected by motion in the appellate court before the mandate issues. (*State of California*, 7 U. S. App. 652; 54 Fed. Rep. 404.) Except in a very plain case restitution of money paid under an erroneous decree will not be directed by the appellate court

where the interests of the parties defendant may be diverse; but leave will be reserved in the mandate to present a petition for restitution to the court below. (*Andrews v. Thum*, 33 U. S. App. 393; 71 Fed. Rep. 763.) The circuit court will, upon writ of error, remand a case which has been brought within the jurisdiction by means of collusion, where the proof is clear; when the proof is not clear, on reversing the judgment, the court will direct the trial and determination of that question at the circuit. (*Ashley v. Board of Supervisors*, 16 U. S. App. 656; 60 Fed. Rep. 55.) A judgment which has been affirmed stands in the same position after mandate is sent down that it did before the writ of error was allowed. (*Nelson v. First Nat. Bank*, 70 Fed. Rep. 526.) A court engaged in the regular trial of cases on a day not a motion day is not bound to drop all business and immediately grant a motion for judgment in accordance with the mandate of a higher court on reversal. (*Re Joseph Hall*, 167 U. S. 38.) Whatever is before the appellate court and is disposed of by virtue of the appeal becomes the law of the case, and the lower court must carry it into execution according to the mandate without power to modify, reverse, enlarge, or suspend it. (*Bissell Carpet Sweeper Co. v. Goshen Sweeper Co.*, 43 U. S. App. 47; 72 Fed. Rep. 545.)

Rehearing after mandate.—After a federal appellate court has passed upon all the issues before it and finally disposed of the case, the court below has no power to subsequently entertain a bill of review based on newly discovered evidence unless the mandate gives such privilege. (*In re Gamewell Fire Alarm T. Co.*, 33 U. S. App. 452; 73 Fed. Rep. 908.) But if the appeal was from an interlocutory decree, a rehearing may be allowed, after mandate, by the trial court. (*C. & A. Potts & Co. v. Creagher*, 71 Fed.

Rep. 574.) The appellate court may ordinarily entertain an original petition for leave to file in the court below a bill of review or supplemental bill in the nature of a bill of review, even after the close of the term at which the judgment was entered. (In re Gamewell Fire Alarm Tel. Co., 33 U. S. App. 452; 73 Fed. Rep. 908.) It is too late to question the jurisdiction of the circuit court after a return of a mandate from the circuit court of appeals. (Billings v. Aspen Min. & Smelting Co., 53 Fed. Rep. 561.)

Appeal from decree on mandate.—Where the judgment or decree upon the mandate of an appellate court determines questions not covered thereby, it is subject to review by appeal or writ of error in the proper appellate court. (Metcalf v. City of Watertown, 34 U. S. App. 107; 68 Fed. Rep. 859; Laidlaw v. Oregon Ry. & Nav. Co., 48 U. S. App. 430; 81 Fed. Rep. 876.) In such case the second writ of error brings up nothing for review but the proceedings subsequent to the mandate. (Republican Min. Co. v. Tyler M. Co., 48 U. S. App. 213; 79 Fed. Rep. 733.) Where the supreme court decides that the circuit court has jurisdiction of a cause, and remands the same for further proceedings, the circuit court of appeals cannot, on a subsequent appeal, reopen the question of jurisdiction. (Nashua & L. R. Corp. v. Boston & L. R. Corp., 5 U. S. App. 97; 51 Fed. Rep. 929.) An appellate court should not ordinarily entertain an appeal from a decree entered in pursuance of a mandate from the circuit court of appeals when no errors are assigned as to matters arising subsequent to the mandate. (Gregory v. Pike, 33 U. S. App. 700; 77 Fed. Rep. 241; Merrill v. National Bank of Jacksonville, 41 U. S. App. 645; 78 Fed. Rep. 208.)

§ 184. Appeals, when taken.—No appeal or writ of error by which any order, judgment or de-

cree may be reviewed in the circuit courts of appeals under the provisions of this act shall be taken or sued out except within six months after the entry of the order, judgment, or decree sought to be reviewed. *Provided*, however, that in all cases in which a lesser time is now by law limited for appeals or writs of error, such limits of time shall apply to appeals or writs of error in such cases taken to or sued out from the circuit court of appeals, and all provisions of law now in force regulating the methods and system of review through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect to the circuit courts of appeals, including all provisions for bonds or other securities to be required and taken on such appeals and writs of error, and any judge of the circuit courts of appeals, in respect of cases brought or to be brought to that court, shall have the same powers and duties as to the allowance of appeals or writs of error, and the conditions of such allowance, as now by law belong to the justices or judges in respect of the existing courts of the United States respectively. (26 U. S. Stats. 829, 311; Rev. Stats. secs. 997-1013.)

Time within which appeal to circuit court of appeals may be taken.—An appeal to the circuit court of appeals must be taken within the time prescribed in the statute, that is within six months after the entry of the decree sought to be reviewed, or the appeal will be dismissed. (Condon v. Central Loan & Trust Co., 36 U. S. App. 579; 73 Fed. Rep. 907;

Flahrity v. Union Pac. Ry. Co., 12 U. S. App. 532; 56 Fed. Rep. 908; Union Pac. Ry. Co. v. Colorado Eastern Ry. Co., 12 U. S. App. 110; 54 Fed. Rep. 22; Threadgill v. Platt, 71 Fed. Rep. 1; Prescott etc. Ry. Co. v. Atchison T. Co., 51 U. S. App. 599; 84 Fed. Rep. 213; Hamilton v. Brown, 2 U. S. App. 540; 53 Fed. Rep. 753; Marine v. Lyon, 8 U. S. App. 573; 62 Fed. Rep. 153.) The filing of the petition for appeal and assignments of error in the office of the clerk of the circuit court within the statutory period is not sufficient. (Green v. City of Lynn, 87 Fed. Rep. 839.) A writ of error must be issued and filed with the court below within the time prescribed by law. (Stevens v. Clark, 18 U. S. App. 584; 62 Fed. Rep. 321; U. S. v. Baxter, 10 U. S. App. 241; 51 Fed. Rep. 624.) An appeal may be perfected, notwithstanding the security has not been given within six months after the entry of the decree sought to be reviewed. (Wickelman v. A. B. Dick Co., 85 Fed. Rep. 851.) A rule limiting the time for an appeal is applicable to a case already decided. (Re Phillip Hien, 166 U. S. 432.) Where, in accordance with local practice, a motion for a new trial is made after judgment, the judgment does not become effective for the purpose of a writ of error until such motion is disposed of, and the time limited by statute for the allowance of a writ of error or appeal runs from that date. (Altenberg v. Grant, 54 U. S. App. 312; 83 Fed. Rep. 980; Louisville Trust Co. v. Stockton, 41 U. S. App. 579; 72 Fed. Rep. 1; Voorhees v. Noye Mfg. Co., 151 U. S. 135; Aspen Min. & Sm. Co. v. Billings, 150 U. S. 31; Andrews v. Thum, 21 U. S. App. 459; 64 Fed. Rep. 149; and see Desvergers v. Parsons, 23 U. S. App. 239; 60 Fed. Rep. 143.) Parties cannot extend the time for appeal by stipulation of the parties. (Dodson v. Fletcher, 49 U. S. App. 114; 79 Fed. Rep. 129; Stevens v. Clark, 18 U. S. App. 584; 62 Fed. Rep.

321.) An appeal taken before any decree is drawn is premature. (*Herrick v. Cutcheon*, 5 U. S. App. 250; 55 Fed. Rep. 6.) When the last day of the six months falls on Sunday the appeal cannot be taken or writ sued out on any subsequent day. (*Johnson v. Meyers*, 12 U. S. App. 220; 54 Fed. Rep. 417.)

Review of findings of fact in admiralty cases.—The Act of February 16, 1875, requiring the circuit courts in admiralty cases, to make separate findings of fact and conclusions of law, and limiting the supreme court on appeal, to a review of the questions of law arising on the record, is not applicable to the review of such cases in the circuit court of appeals; but in the latter courts an admiralty appeal is to all intents and purposes a trial *de novo*, and the transcript must contain the testimony. (*Nelson v. White*, 83 Fed. Rep. 215; *The Philadelphian*, 21 U. S. App. 90; 60 Fed. Rep. 423; *The Coquitlam*, 48 U. S. App. 103; 77 Fed. Rep. 744; *The Glendale*, 42 U. S. App. 546; 81 Fed. Rep. 633; *The Brandywine*, 87 Fed. Rep. 652; *The Albany*, 45 U. S. App. 507; 81 Fed. Rep. 966; *Pioneer Fuel Co. v. McBrier*, 84 Fed. Rep. 495.) But if the proofs are not reduced to writing, or an equivalent therefor is not found in the record, the court will decline to try the facts anew. (*The Philadelphian*, 21 U. S. App. 90; 60 Fed. Rep. 423.)

Bonds on Appeal.—A writ of error will not be dismissed on account of the defective character of a bond, since a proper bond may be allowed to be filed if necessary (*Union Pac. Ry. Co. v. Callaghan*, 161 U. S. 91.) If the appeal bond is defective in that it runs to only one of the several parties whom the citation makes respondent, this defect may be cured after the cause is in the appellate court. (*Farmer's L. & T. Co. v. Chicago & N. P. R. R. Co.*, 34 U. S. App. 626; 73 Fed. Rep. 314.) Where a surety on a

bond for costs upon appeals has been approved for about one month, it is too late for appellee to move for the withdrawal of the approval. (*National Harrow Co. v. Hensch*, 81 Fed. Rep. 926.) A delay of one month in filing bonds for costs after allowance of an appeal from a decree granting a perpetual injunction is not so unreasonable as to require dismissal of the appeal. (*Schenck v. Diamond Match Co.*, 39 U. S. App. 191; 73 Fed. Rep. 22.) But permission to file a bond cannot be accorded after a lapse of nearly four years. (*Beardsley v. Arkansas & L. A. Ry. Co.*, 158 U. S. 123.) An appeal bond in an action in which an attachment has been levied operates as security only for the costs of appeal where there has been no impairment of the security by waste of the property, and no burdens upon it accruing by non-payment of taxes. (*Dexter, Horton & Co. v. Sayward*, 79 Fed. Rep. 237.) A supersedeas bond, according to the statute, covers not merely compensation for the delay but also the amount of the decree appealed from, so far as the latter directs the payment of money by appellant to appellee. (*Rosenstein v. Tarr*, 51 Fed. Rep. 368; *Tarr v. Rosenstein*, 5 U. S. App. 197; 53 Fed. Rep. 112.) When a surety signs a supersedeas bond without requiring any indemnity for so doing he must be held to have done so on the personal credit of the principal. (*New York Security & T. Co. v. Louisville*, 79 Fed. Rep. 386.) An appeal and supersedeas bond is insufficient if conditioned to prosecute the appeal to effect and answer all costs and damages "in the event the decree is affirmed" instead of "if it fails to make its plea good." (*Peace River Phosphate Co. v. Edwards*, 30 U. S. App. 513; 70 Fed. Rep. 728.) Judgment may be had on a supersedeas bond, on affirmance of the judgment, by motion against the sureties as well as the principal. (*Third Natl. Bank v. Gordon*, 53 Fed. Rep. 471.) A

corporation will not be received as surety when there is fair ground to question whether power to bind itself is conferred by the acts under which it is incorporated. (*Black v. Black*, 53 Fed. Rep. 185.) The sureties are not entitled to have a suit on the bond stayed until attached lands of the principal are sold and such security exhausted. (*Davis v. Patrick*, 12 U. S. App. 629; 57 Fed. Rep. 909.)

Allowing appeals and writs of error.—When one of the judges of the circuit court has approved an appeal bond it is competent for another judge of that court who might have granted the appeal and approved the bond to sign the citation. (*Farmer's Loan & Trust Co. v. Chicago & N. P. Ry. Co.*, 34 U. S. App. 626; 73 Fed. Rep. 314.) An indorsement by the judge of the allowance of a writ of error upon the petition therefor is sufficient, although the judge does not indorse his allowance upon the writ itself. (*Warner v. Texas & P. Ry. Co.*, 2 U. S. App. 647; 54 Fed. Rep. 920.) The policy of the law creating the circuit court of appeals shows marked liberality in allowing appeals in all cases. (*Warner v. Texas Pac. Ry. Co.*, 2 U. S. App. 647; 54 Fed. Rep. 920.) Where the circuit court has made an order allowing an appeal on behalf of a party upon an erroneous appearance of counsel or under a mistake of fact, it may, and should, upon learning the truth, vacate such order. (*Farmer's Loan & Trust Co. v. McClure*, 49 U. S. App. 46; 78 Fed. Rep. 211.) A circuit court will not be compelled by mandamus to allow an appeal from a denial of a motion to consolidate causes. (*Lewis v. Baltimore & L. R. Co.*, 8 U. S. App. 645; 62 Fed. Rep. 218.) The appellate court under the above section has power to allow parties to be joined as appellants who have applied by proper petition within six months. (*The City of Naples*, 32 U. S.

App. 613; 69 Fed. Rep. 794.) Writs of error from the circuit court of appeals to the circuit and district courts are sued out under the same practice and regulations as in cases of writs from the supreme court. (*Cotter v. Alabama G. S. R. Co.*, 22 U. S. App. 372; 61 Fed. Rep. 747.)

§ 185. Issue of writs.—The circuit court of appeals shall have the powers specified in section seven hundred and sixteen of the Revised Statutes of the United States. (26 U. S. Stats. 827, sec. 12; Rev. Stats. sec. 716.)

Issuance of writs by circuit court of appeals.—Inasmuch as the circuit court of appeals has only such power to issue a writ of mandamus as the courts of the United States had under Revised Statutes, sec. 716, it has no power to issue such a writ in any case which is not pending in its court. (*United States v. Judges of U. S. Circuit Court of Appeals*, 56 U. S. App. 33; 85 Fed. Rep. 177.) The writ of mandamus may not be invoked to direct a court or officer to reverse the decision of a judicial question which has already been rendered (*Id.*). Mandamus will issue to direct the execution of a judgment of the circuit court of appeals notwithstanding a second appeal for matter arising previous to that judgment. (*In re Pike*, 33 U. S. App. 673; 76 Fed. Rep. 400.) On an appeal to the circuit court of appeals that court will not issue a writ of mandamus to the clerk of the lower court to certify and transmit the record for the purpose of determining in advance whether a certain deposition is part of the record. (*Starcke v. Klein*, 13 U. S. App. 589; 62 Fed. Rep. 502.) A circuit court will not be compelled by mandamus to allow an appeal from a denial of a motion to consolidate causes. (*Lewis v. Baltimore & L. R. Co.*, 8 U. S. App. 645; 62

Fed. Rep. 218). A writ of assistance should not issue against one who is not a party to the suit, and who did not enter *pendente lite*. (*Comer v. Felton*, 22 U. S. App. 313; 61 Fed. Rep. 731.) *Mandamus* will lie to enforce a ministerial duty as *contra-distinguished* from a duty which is merely discretionary. (*United States v. Lamont*, 155 U. S. 303.) A writ of error to review a judgment at law in the circuit court of appeals issues from that court; and a judge in passing upon an application for the writ must exercise the powers of that court and is bound by its limitations. (*Threadgill v. Platt*, 71 Fed. Rep. 1.)

Ne exeat, Rev. Stats. sec. 717; restraining order, Id. secs. 718, 719; holding to security for breach of peace, Id. 727; habeas corpus, Id. secs. 751, 752; arrest and admission to bail, Id. secs. 1015, 1016; search-warrants under Revenue Law, Id. sec. 3066; as amended, 22 U. S. Stats. 49; search-warrants for counterfeits and implements, 26 U. S. Stats. 743, sec. 5.

§ 186. Appeals, etc., from Indian Territory court.—Writs of error and appeals from the final decision of said appellate court [in Indian Territory] shall be allowed, and may be taken to the circuit court of appeals for the eighth judicial circuit in the same manner and under the same regulations as appeals are taken from the circuit courts of the United States. (28 U. S. Stats. 698.)

Note.—Appeals may be taken direct to the supreme court from the Federal courts in the Indian Territory, in citizenship cases, etc. (30 U. S. Stats. 591; see post, sec. 208 a.) Prior to 1895 appeals could be taken from all U. S. courts in Indian Territory directly to the circuit court of appeals, but since the appellate court for the Indian Territory has been created, appeals may be

taken only from it (Gowen v. Bush, 36 U. S. App. 543; 72 Fed. Rep. 299; Scott v. Hamner, 36 U. S. App. 547; 72 Fed. Rep. 289).

§ 187. Appeals to supreme court—Repeals.—Section six hundred and ninety-one of the Revised Statutes of the United States, and section 3 of an act entitled, "An act to facilitate the disposition of cases in the supreme court, and for other purposes," approved February sixteen, eighteen hundred and seventy-five, be and the same are hereby repealed. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections five and six of this act are hereby repealed. (26 U. S. Stats. 829, sec. 14.)

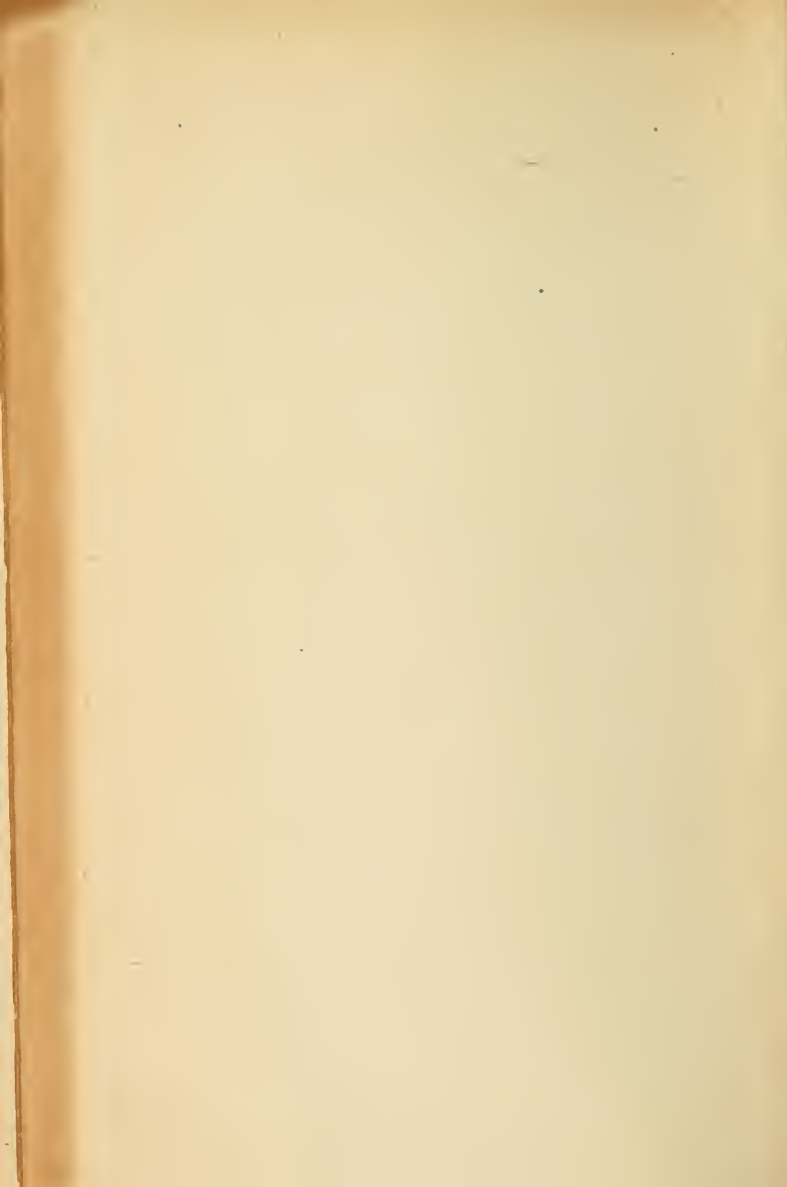
§ 188. Jurisdiction in cases from territorial supreme courts.—The circuit courts of appeal, in cases in which the judgment of the circuit courts of appeal are made final by this act, shall have the same appellate jurisdiction, by writ or error or appeal, to the courts of Territories as by this act they may have to review the judgments, orders, and decrees of the district courts and circuit courts, and for that purpose the several Territories shall, by order of the supreme court, to be made from time to time, be assigned to particular circuits. (26 U. S. Stats. 830, sec. 15. Act approved March 3, 1891.)

Appeals from territorial supreme courts.—No appeal lies from a territorial supreme court to the cir-

cuit court of appeals in an action of assumpsit between citizens of the territory for goods sold and delivered (*Aztec Min. Co. v. Ripley*, 10 U. S. App. 383; 53 Fed. Rep. 7). Neither will a writ of error lie in the case of a conviction of an infamous crime (*Folsom v. United States*, 160 U. S. 121). In case removed from a territorial district court to a Federal district court, a proceeding for a new trial is not reviewable in the circuit court of appeals merely because a decision of the territorial district court would have been reviewable in the supreme court of the territory (*Alexander v. United States*, 15 U. S. App. 158; 57 Fed Rep. 828). The district court of Alaska is to be regarded as the supreme court of that territory within the meaning of sec. 15 of the act of March 3, 1891 (*The Coquitlam v. United States*, 163 U. S. 346).

Ch. L.







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